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# House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, December 22, 2005, at 4 p.m.

# Senate

WEDNESDAY, DECEMBER 21, 2005

## DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the clerk will report the conference report to accompany H.R. 2863.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

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

(The conference report is printed in the House proceedings of December 18, 2005.)

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

The PRESIDING OFFICER. Is there a sufficient second?

**NOTICE**

If the 109th Congress, 1st Session, adjourns sine die on or before December 22, 2005, a final issue of the Congressional Record for the 109th Congress, 1st Session, will be published on Friday, December 30, 2005, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Thursday, December 29. The final issue will be dated Friday, December 30, 2005, and will be delivered on Tuesday, January 3, 2006. Both offices will be closed Monday, December 26, 2005.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

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By order of the Joint Committee on Printing.

TRENT LOTT, *Chairman.*

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



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There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I would like to speak for 30 seconds.

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

Ms. LANDRIEU. Mr. President, I know everyone is anxious to vote. In this underlying bill on defense, I just wish to say that there is $29 billion for coastal restoration, hurricane protection, housing, and business help for the gulf coast. I know it has been a tough, long day, but in this bill there is $29 billion because of the hard work by both sides of the aisle. We are very grateful for the help on this bill.

Mr. BIDEN. Mr. President, I rise to express my surprise and deep-seated opposition to the so-called Public Readiness and Emergency Preparedness Act, which is included in the Defense Department Appropriations bill.

This provision would give the Secretary of Health and Human Services authority to provide almost total immunity from liability to the makers of almost any drug, and to those who administer it.

While the measure's proponents portray it as a simple tool to make sure we have sufficient vaccine available in the case of an avian flu pandemic, the actual language of the provision is far broader than that, and it therefore poses a danger to all Americans.

The actual provision permits immunity for the makers of virtually any drug or medical treatment. All the secretary need do is declare that it is a ''countermeasure'' used to fight an epidemic. One solitary person gets to decide what is a countermeasure and what is an epidemic. There is nothing to prevent the declaration of immunity for, say, Tylenol. There is nothing to prevent a declaration that, say, arthritis is an epidemic.

What's more, this is no typical grant of immunity. No, the breadth of this provision is staggering. A drug maker can be grossly negligent in making or distributing a drug, and still escape liability. It can even make that drug with wanton recklessness and escape scott-free after harming thousands of people.

In fact, under this provision, the only way a victim could still recover compensation from a drug maker for a dangerous drug or vaccine would be to prove ''willful misconduct,'' and then only by ''clear and convincing evidence.'' What this means is that, for a victim to be able to be compensated by the company that harmed him, he must prove that they committed a crime. And even if he can do that, the company can still avoid liability simply by notifying the authorities within 7 days that someone was harmed by their product. In other words, so as long as you ''confess'' to your bad behavior, you can get away with it!

Is this the sort of justice system that Americans desire?

The answer to this question seems clear from the way this provision was inserted in the larger bill. No hearings were held on this language; no Committee vote was taken; no bill passed the House or the Senate. Not even the House and Senate conferees had a chance to give input on this provision. Indeed, I'm told it was inserted in the dead of night, after conferees had already signed the conference report!

Perhaps the folks who secretly inserted this provision in the dead of night knew that it was overly broad, as I've discussed; perhaps they knew that it was constitutionally suspect, as has been noted by at least one prominent law professor; or perhaps they just knew that, if this provision ever saw the light of day, the American people would not stand for such secrecy and injustice.

This should not be how we conduct the business of the American people, and we will all suffer if this provision is permitted to go forward.

Mr. BYRD. Mr. President, the Senate is now on its way to passing the Defense appropriations bill, which will provide essential funds to our troops. The U.S. Armed Forces are comprised of some of the finest men and women our country has to offer. Each of these brave individuals has made the commitment to serve our country, during times of war or peace, and each is deserving of the support of a grateful nation.

I particularly wish to salute the fine members of the West Virginia National Guard who have time and again demonstrated their commitment to serving our State and our Nation. These citizen-soldiers have served in all corners of the world while balancing their obligations to their families, to their employers, and to their communities. The Defense appropriations bill is important to our National Guard and all the members of our military. I am proud to have worked with my colleagues to expedite passage of this essential legislation.

The Senate is proceeding in a wise course after the cloture vote this morning. The most controversial part of the conference report will be removed, clearing the way for the Defense appropriations bill to pass the Senate and be sent on its way to the White House. It is unfortunate that the deletion of the most controversial provision that was attached to the bill in conference will also result in eliminating needed funds for hurricane relief, LIHEAP, homeland security, and border security. Congress should not delay in providing additional funds for these purposes. There are emergency needs in each of these areas that must be met with quick action.

While the ANWR provision will be removed from the bill, I continue to have serious concerns about the avian flu-related liability provisions that were slipped into the conference report without debate. These liability provisions did not appear in either the House- or the Senate-passed bill. These provisions were not in the materials presented to the conference committee during its deliberations. It was not until the dead of night on this past Sunday, after signatures had already been collected on the conference report, that the Republican majority slipped these provisions into the bill before the Senate today. What an insult to the legislative process.

It makes sense for Congress to take steps to encourage companies to develop and manufacture lifesaving flu vaccines. Manufacturers and health professionals acting in good faith to protect the public health, by developing and distributing critical vaccines, should not be unfairly penalized for their efforts to protect the American people from the horrors of a pandemic disease.

However, our country has a moral obligation to look out for those who may become seriously ill as a result of these vaccines. We are talking about the lives of real American people. There ought to be compensation available to those persons who may suffer adverse effects from these kinds of vaccines.

But the liability amendment slipped into the bill does not contain any meaningful provisions establishing a fair compensation system to protect vaccine recipients. Americans who pull up their sleeves to receive an emergency flu vaccine must be provided with some assurance that they would not face economic catastrophe should they be harmed.

All of this comes as our country is coming to grips with the threat that the avian flu might spread to our shores. A flu pandemic is one of the most dangerous threats the United States faces today. Medical experts warn that a global, cataclysmic pandemic is not a question of if but when. Like any natural disaster, it could hit at anytime. And when it does, it could take the lives of tens of millions of people.

According to the Congressional Budget Office, an avian flu pandemic would deliver a devastating $675 billion blow to the U.S. economy. This administration has failed to adequately respond to safeguard the American people and limit the human and economic cost of such a pandemic.

In the event of a flu pandemic, hundreds of millions of Americans will need to be vaccinated as quickly as possible. Yet our current public health infrastructure is alarmingly ill-equipped for this threat. This administration and the Republican-led Congress have weakened the health care infrastructure of this country by starving it of needed funding. The administration has been engaged in a relentless campaign to arbitrarily cut Medicaid and other vital safety-net programs that protect the health of the poor and disabled.

I am also disappointed that the majority chose to limit funds for vaccines, medicines, and other tools to combat

the avian flu to just $3.8 billion. That level of funding is $4.3 billion below the level that the Senate approved just 2 months ago.

The American people deserve better from their elected representatives. They deserve a coherent plan to combat the looming threat of a flu pandemic with significant resources devoted to protecting the public's health.

Finally, Mr. President, I regret that so little attention has been paid during the recent debate on this bill to the most important issue facing our country. The ongoing war in Iraq has so far cost the lives of 2,155 members of the U.S. Armed Forces. Including the so-called ''bridge fund'' of $50 billion that is appropriated in this bill, our Nation will have dedicated $259 billion to carry out the war in Iraq. What an enormous sum. More than a quarter of a trillion dollars has been spent on this war that should never have begun.

What is more, the newspapers are full of stories that the President is going to ask Congress for another $100 billion in the coming months to pay for the wars in Iraq and Afghanistan.

These huge sums of money are being requested and spent for the war in Iraq with no idea of how the White House intends to get our troops out of that country. The President has taken to the speaking circuit to try to rally support for the war, but his statements are simply variations on a theme: stay the course, stay the course, stay the course.

Americans are asking questions that the White House has so far refused to address. How much longer will our troops be in Iraq? How many more Americas will perish in this costly war? How many more billions will be spent to support the administration's misguided policies in Iraq?

Instead of getting answers to these questions, and instead of changing course in the war in Iraq, this appropriations bill includes $50 billion to continue the wars in Iraq and Afghanistan, despite the fact that the President did not request a single dime in his budget for these costs. Let me say again: the Congress is appropriating billions more for the war in Iraq without a request from the President. Is this any way to pay for a war?

Although Senators must do our part in providing for our troops serving in harm's way, I do not think that our troops are served by having Congress appropriate funds for the war in Iraq without any explanation by the President or the Secretary of Defense about how these funds are to be used. If the administration wants additional funds to prosecute the war in Iraq, the administration should answer the tough questions about its policy for getting our country out of Iraq.

Mrs. CLINTON. Mr. President, I would like to take this opportunity to object to insertion of a provision in the Department of Defense appropriations bill that would provide sweeping immunity protections to pharmaceutical manufacturers. I know that this provision is being billed as a simple liability protection to help those who would manufacture avian flu vaccine, but it is nothing of the sort. I support limited liability protections for manufacturers to help cover their risks in developing products that our Nation will need in case of emergency. However, this provision would grant immunity to all claims of loss, including death and disability, for a broad range of products, including any drug that the Secretary designated as one that would limit the harm caused by a pandemic—a definition so broad as to encompass nearly any drug.

This immunity is not subject to judicial review. It preempts any State laws that provide different liability protections or that may provide stronger consumer safety protections for pharmaceutical products. In fact, the only exception to this immunity is for actions of ''willful misconduct,'' which is so narrowly defined that it would only apply to cases where a company intentionally set out ''to achieve a wrongful purpose . . . in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.'' The provision requires the Secretary and the Attorney General to narrow the scope of willful misconduct even further and states that for any FDA-approved product, willful misconduct will not apply unless the Government is already taking action against the manufacturer for such misconduct.

If the Government is providing complete immunity to manufacturers, how are those who may be injured to seek compensation in case of injury? This provision sets up a ''Covered Countermeasure Process Fund,'' but fails to provide any money for this fund. We all recognize that in a public health emergency, we may need to seek whatever protections we can find to prevent widespread death and disease—but those who are asked to take these products are told that if they are injured, their only recourse is to seek compensation from a fund which currently has no money to award.

I am also gravely concerned by the fact that this provision was included in the appropriations bill without following the process for passing legislation used by this Chamber. This authorizing—authorizing, not appropriating—language was never considered, let alone agreed to by the Senate. It was never agreed to by the HELP or Judiciary Committees, which have jurisdiction over this matter. It is a mockery of the legislative process. I believe that the American people are ill-served by Congress when controversial and potentially harmful provisions can simply be inserted without undergoing the open deliberations and debate that are fundamental to the democratic process and are designed to protect our citizens from special interests and back-room dealings. This provision should be stripped from the bill.

Mr. DODD. Mr. President, this week, the Senate considers conference reports on two pieces of legislation—the Defense Authorization and Appropriations Acts that are critical to the security of our Nation. These conference reports contain important measures for keeping our troops safe and secure, particularly provisions to upgrade body armor and protective equipment, resources to ramp-up vital construction of U.S. military ships, aircraft, and ground vehicles, and funding for research on vital defense technologies of the future.

The conference agreements also promote important quality-of-life improvements for our troops and their families, including a 3.1 percent pay raise for all military personnel and increases in compensation for survivors of military personnel killed since the onset of the wars in Afghanistan and Iraq.

These two bills could not come before the Senate at a more urgent time. Our Nation is at war, and our troops desperately need these resources to complete their missions in Iraq and Afghanistan.

This Congress owes America's fighting men and women its unconditional support for these critical defense priorities. But this year, the administration and Members of the majority in Congress have fallen far short of meeting this responsibility. They have allowed a handful of powerful special interests to impede the critically important process of funding our national defense, including America's highest security priorities. The Republican leadership's decisions to open up the Arctic National Wildlife Refuge for oil companies' exploitation and to shield drug and vaccine makers from any accountability have absolutely nothing to do with national security and have no place in bills like the defense appropriations conference report. Their willingness to risk funding for our troops in favor of these parochial priorities is indefensible.

Let me say a few words about these two specific measures.

I have consistently opposed opening the Arctic National Wildlife Refuge, ANWR, to oil drilling because I am unconvinced that the small amount of recoverable oil there outweighs the permanent damage that we would do to the area and the nearly 200 species of wildlife that live there. The process entails a web of oil platforms, pipelines, production facilities, power facilities, support structures, and roads across the entire area. I strongly believe we need to ensure our Nation's economic and energy security, but any recoverable oil in the Refuge would not begin flowing for at least 10 years. What is the urgency to include this legislation now in a bill it has no business being part—of especially when the impact of such a measure could be so remote and so damaging? There is significantly less job creation than proponents would have us believe, there is minimal

recoverable oil available, drilling in ANWR would have no impact on current energy prices or supply or even on our foreign oil dependence, and it would leave a web of infrastructure that would permanently ruin the pristine nature of the land and habitat. Moreover, if we took just a few modest steps to use energy more efficiently—such as properly inflating vehicle tires or raising engines' fuel efficiency—we would save more oil than currently exists in the ANWR. It is simply irresponsible to move forward with this legislation.

Just as irresponsible is an equally non-germane provision shielding vaccine producers from liability. This language provides sweeping legal immunity to a few companies, and relieves them of responsibility for their reckless and negligent actions. Rather than encouraging companies to make safe and effective medicines, it will provide a perverse incentive by protecting those companies that make ineffective or harmful products. That is unwise—not to mention unfair—to companies that strive for excellence, a number of which are located in Connecticut. And rather than encouraging Americans to be vaccinated or to take needed medication, it will discourage them from doing so by failing to provide even rudimentary compensation for the few who will inevitably be injured by these products. Make no mistake about it: this plan fails to protect the American people from the risk of a flu pandemic or from other biohazards.

Senator KENNEDY and I spent the past several months negotiating with Senators ENZI, BURR, GREGG, FRIST, and others on the Health, Education, Labor, and Pensions Committee to try to reach a bipartisan compromise on this issue. Senator KENNEDY and I made several proposals, modeled on past Congressional action, to protect manufacturers from frivolous lawsuits while providing fair and adequate compensation to those who are injured. Both sides worked in good faith, and we made significant progress.

Unfortunately, my understanding is that a decision was made by leaders of the Republican caucus to forego this bipartisan process. Instead, this non-germane provision was slipped in the final hours of this session of Congress into the Defense Appropriations Conference Report. Furthermore, it is my understanding that this language was inserted after members had agreed to the Conference Report with the understanding that this language was not included. I am disturbed and disappointed by this blatant abuse of power and disregard for Senate procedures. I can only assume that the supporters of this provision are using this tactic because they know that their plan would not stand up to public scrutiny and Senate debate.

In terms of some of the germane provisions of this bill, I must also express my disappointment with the conferees' decisions to weaken important measures that were actually inserted in the Senate's defense bills to support and protect our troops. For example, I originally authored amendments to both of these bills that would ensure that our troops would be reimbursed for purchasing their own critical safety and protective gear that the Defense Department failed to provide for use in Iraq and Afghanistan. The Senate approved this measure without any dissent, having recognized the administration's inadequate compliance with current law. After failing to implement a program under a law enacted last year, the Pentagon only established the reimbursement initiative as this body considered the new provisions to extend this benefit to all military personnel deployed to Iraq and Afghanistan. Most appalling to me is that there remains little evidence that the Pentagon has acted to ensure that our soldiers, sailors, airmen, and marines receive the information that they need to take advantage of this important program. Given that the Defense Department is failing to meet its commitment to adequately equip our military personnel, the least that it can do is inform our brave men and women of the compensation due to them. In the end, I was deeply troubled that the final version of this legislation did not include adequate language to address many of the concerns originally raised on this floor just two months ago. In particular, as part of an agreement worked out with both Chairmen of the Defense Appropriations Subcommittee and Senate Armed Services Committee, we had agreed to extend the reimbursement program to troops who made purchases up until the end of the 2006 fiscal year. In both final conference reports, this deadline was cut short to April 1, 2006.

In the final analysis of the underlying bills, I can only take solace in the fact that other critically important measures in these conference reports could have been weakened even further. We in this body managed to avert grave problems posed by misplaced priorities by the administration and the Republican leadership. For example, it is my understanding that the administration's allies in the House actually attempted to slip another measure—this time, related to campaign finance—into the Defense Authorization Act after the conferees had already signed the conference report—without any hearing or public review by the appropriate committees of jurisdiction. It was only after the chairman and ranking member of the Senate Armed Services Committee intervened that this utter abuse of power was averted.

In another case, the administration and its allies in Congress sought to thwart the final approval of Senator MCCAIN's amendment that would set standards for the interrogation of detainees in the custody of the United States, and prohibit the cruel, inhuman, or degrading treatment of these detainees. I strongly support Senator MCCAIN's amendment because it upholds the values on which our country is based, it helps strengthen the rule of law, and most importantly, it serves to protect American troops and civilians who are currently serving and living abroad.

I regret, however, that the Bush administration attempted for so long to block adoption of this amendment. Indeed, the administration only accepted it in the face of overwhelming congressional support and in the wake of international condemnation resulting from allegations of secret CIA prisons in Europe. While I am certainly pleased that the McCain amendment was included in this conference report, I hope that the administration's stonewalling has not undermined the very things that this amendment aims to protect—American values and American lives.

In the end, it is our solemn duty as members of this institution to promote policies that will safeguard America's critical security interests. That is why I am so deeply offended by the tactics which the majority used to weaken many of these efforts. After all, most of the germane provisions of these two Defense-related conference reports will support our defense needs and protect U.S. military personnel deployed in harm's way. For example, within these germane provisions, I am particularly proud that the bills build on Connecticut's unique strengths in contributing to America's defense needs. From increases in Black Hawk helicopters to production of a new Virginia Class submarine, our troops will be better prepared to meet the security challenges of the 21st century.

Under these bills, the Army and Navy will receive 83 much needed Black Hawk helicopters to perform a variety of critical missions including medical evacuations, air assaults, and special operations. In the shipbuilding accounts, in addition to funding the procurement of another Virginia submarine, these bills will ensure that the Navy remains committed to developing new undersea technologies—including development of new submarine designs—an important element of our nation's pertinent efforts to maintain undersea dominance as countries such as China and Russia expand their own submarine fleets.

To address immediate concerns for our soldiers and marines, these bills finally contribute meaningful resources for countering the most serious threats facing our troops in Iraq—the so-called improvised explosive devices or IEDs. Devoting $1 billion to the Joint Improvised Device Defeat Task Force will help accelerate American development of new technologies and tactics for detecting, jamming, or de-activating these roadside bombs which continue to plague U.S. combat operations in Iraq. In addition, I am truly pleased with the conferees' decision to add an additional $610 million to the Administration's otherwise slow attempts at reinforcing American ground vehicles

in Iraq with state-of-the-art body armor and other protective gear. This Congress has few higher priorities than the safety and wellbeing of our troops deployed in harm's way. And I believe these measures truly are steps in the right direction.

But we must remain dedicated to such critical force protection measures, particularly as our forces battle insurgents in Iraq and Afghanistan. The Republican majority's attempts to ensnare these defense bills with unrelated political schemes gravely threatened our ability to meet this commitment and amounted to an utter abuse of power.

The United States is at war. Our troops and the American people expect that our nation's defense policy will be unfettered by special interests and untainted by political gamesmanship. I can only hope that, as we return to Capitol Hill to begin the New Year a few weeks from today, the leaders of the majority party will resolve to put national interests over narrow interests.

Mr. LEAHY. When the Department of Defense authorization bill passed the Senate on November 15, I spoke of my concerns about an amendment that limits the rights of detainees in U.S. custody at Guantanamo Bay, Cuba, to file habeas corpus petitions in federal court. That amendment was modified in conference to further erode these rights, and then identical text was added to the conference report on Defense appropriations to ensure that the language was enacted into law in one bill or the other.

Debates over the treatment of detainees have dominated our discussions of both the Defense authorization and appropriations bills. Senator MCCAIN waged a battle with the White House and his own party to ensure that his amendment requiring the humane treatment of detainees was retained in the conference reports. I commend Senator MCCAIN and the members of the Congress who have fought to address these issues. Despite calls from many of us over recent years, the legislative branch has not met its obligation of oversight and policymaking in this area. I am encouraged that more than 18 months after the revelation of atrocities at Abu Ghraib, we are finally willing to confront this issue.

The administration fought this provision for months, with the President vowing to veto any bill that contained it. But after months of threats and backdoor lobbying, the White House finally recognized that it could not win with a policy that granted itself the authority to use torture or cruel and inhumane treatment in interrogations.

Unfortunately, the positive steps we take today in adopting the McCain amendment are undercut by the modified Graham-Levin amendment in the conference report. As I just noted, I expressed concerns about the Graham-Levin text, and voted against it, when it passed the Senate. At that time, it reflected a modest improvement over an earlier version offered by Senator GRAHAM. Now, it has come almost full circle, and is deeply troubling.

The Graham-Levin amendment as it passed the Senate would deny prisoners that the administration claims are unlawful combatants the right to challenge their detention in a petition for a writ of habeas corpus. At no time in the history of this Nation have habeas rights been permanently cut off from a group of prisoners. Even President Lincoln's suspension of habeas was temporary. The Supreme Court has held numerous times that enemy combatants can challenge their detention. The new version of this text, the text that was added to the conference report, goes even further. It prohibits any lawsuit against the United States brought by a Guantanamo detainee for any reason. This means that while the McCain Amendment requires humane treatment of detainees, the substituted text of the Graham-Levin Amendment provides no remedy whatsoever when detainees are mistreated. The result is that Guantanamo could become the legal black hole that the administration has long argued it should be. The Supreme Court rejected that argument in Rasul v. Bush in 2004.

I am also deeply troubled by other provisions added in conference. The conference report allows a combatant status review tribunal, an administrative review board, or a similar tribunal to consider statements obtained as a result of coercive interrogation, so long as the tribunal assesses the ''probative value'' of the statement. With the passage of the McCain amendment, I had hoped that the Congress was finally prepared to acknowledge that statements obtained by coercion have no value.

A prime example of how abusive interrogation techniques elicit bad intelligence was reported on December 9, 2005, in The New York Times. The article states that the ''administration based a crucial prewar assertion about ties between Iraq and al Qaida on detailed statements made by a prisoner while in Egyptian custody who later said he had fabricated them to escape harsh treatment.'' Just last week, at a speech in Philadelphia, a member of the audience asked the President why the administration continually seeks to link the 9/11 attacks with the invasion of Iraq in spite of the fact that Iraq was not involved in the events of 9/11.

It is beneath the values of this Nation to allow the use of coerced statements in the trials or review panels conducted on the status of detainees. It is also beneath us to strip detainees of habeas rights. Filing a petition for a writ of habeas corpus is often the detainee's only opportunity to openly challenge the basis for his detention. Providing detainees this right is not about coddling terrorists. It is about showing the world that we are a nation of laws and that that we uphold the principles that we urge other nations to follow. It is about honoring and respecting the values that are part of our heritage as Americans and that have shone as a beacon to the rest of the world. Allowing a detainee to file a habeas petition provides legitimacy to our detention system and quells speculation that we are holding innocent people in secret prisons without any right to due process.

Some members of the Senate have argued that these prisoners should be tried in the military justice system. I think that we could all agree on such a course if the administration had worked with Congress from the start and established with our approval procedures that are fair and consistent with our tradition of military justice. The Graham-Levin amendment does allow the Court of Appeals for the District of Columbia to review some of the military commission's final decisions. I am in favor of Federal court review, but Congress seems to have missed the critical step of authorizing the administration to use military commissions. I introduced a bill in the 107th Congress to do just that. So did Chairman SPECTER. If the administration wanted to use military commissions to try detainees, it should have sought and obtained the explicit authorization of Congress. It did not do so. The system that has been established by the administration to try individuals held at Guantanamo does not provide due process or independent review. It is not a system that reflects our tradition of justice.

Since the Graham-Levin amendment would not retroactively apply to pending cases, the Supreme Court will still have the opportunity to determine the legitimacy of the military commissions, as being litigated in case of Hamdan v. Rumsfeld. If the military commission process is rejected by the Court, I hope that the administration will work with Congress to establish a fair system for trying suspects who are captured in the war on terror. Working in this way, we can restore the reputation of our Nation for upholding the rule of law.

Everyone in Congress agrees that we must capture and detain terrorist suspects, but it can and should be done in accord with the laws of war and in a manner that upholds our commitment to the rule of law. The Judiciary Committee held a hearing on detainee issues in June. At that hearing, Senator GRAHAM said that once enemy combatant status has been conferred upon someone, ''it is almost impossible not to envision that some form of prosecution would follow.'' He continued, ''We can do this and be a rule of law nation. We can prove to the world that even among the worst people in the world, the rule of law is not an inconsistent concept.'' I agree with Senator GRAHAM, but I strongly believe that in order to uphold our commitment to the rule of law, we must allow detainees the right to challenge their detention in Federal court.

As Chairman SPECTER noted on the floor last month, there are existing procedures under habeas corpus that have been upheld by the Supreme Court that do not invite frivolous claims and that are appropriate. The Graham-Levin amendment would not only restrict habeas in a manner never done before in our Nation, but, as the chairman of the Judiciary Committee said last week, it would open a Pandora's box.

The chairman is right. We must not rush to change a legal right that predates our Constitution. Creating one exemption to the Great Writ only invites more. The Judiciary Committee has jurisdiction over habeas corpus, and it should have the first opportunity to review any proposed changes carefully and thoroughly. Although congressional action on the issue of foreign detainees is long overdue, we must not act hastily when the Great Writ—something that protects us all—is at stake.

I ask unanimous consent to place in the RECORD an article entitled, ''Qaeda-Iraq Link U.S. Cited Is Tied to Coercion Claim,'' from the December 9, 2005, New York Times.

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

[From the New York Times, Dec. 9, 2005]

QAEDA-IRAQ LINK U.S. CITED IS TIED TO COERCION CLAIM

(By Douglas Jehl)

WASHINGTON.—The Bush administration based a crucial prewar assertion about ties between Iraq and Al Qaeda on detailed statements made by a prisoner while in Egyptian custody who later said he had fabricated them to escape harsh treatment, according to current and former government officials.

The officials said the captive, Ibn al-Shaykh al-Libi, provided his most specific and elaborate accounts about ties between Iraq and Al Qaeda only after he was secretly handed over to Egypt by the United States in January 2002, in a process known as rendition.

The new disclosure provides the first public evidence that bad intelligence on Iraq may have resulted partly from the administration's heavy reliance on third countries to carry out interrogations of Qaeda members and others detained as part of American counterterrorism efforts. The Bush administration used Mr. Libi's accounts as the basis for its prewar claims, now discredited, that ties between Iraq and Al Qaeda included training in explosives and chemical weapons.

The fact that Mr. Libi recanted after the American invasion of Iraq and that intelligence based on his remarks was withdrawn by the C.I.A. in March 2004 has been public for more than a year. But American officials had not previously acknowledged either that Mr. Libi made the false statements in foreign custody or that Mr. Libi contended that his statements had been coerced.

A government official said that some intelligence provided by Mr. Libi about Al Qaeda had been accurate, and that Mr. Libi's claims that he had been treated harshly in Egyptian custody had not been corroborated.

A classified Defense Intelligence Agency report issued in February 2002 that expressed skepticism about Mr. Libi's credibility on questions related to Iraq and Al Qaeda was based in part on the knowledge that he was no longer in American custody when he made the detailed statements, and that he might have been subjected to harsh treatment, the officials said. They said the C.I.A.'s decision to withdraw the intelligence based on Mr. Libi's claims had been made because of his later assertions, beginning in January 2004, that he had fabricated them to obtain better treatment from his captors.

At the time of his capture in Pakistan in late 2001, Mr. Libi, a Libyan, was the highest-ranking Qaeda leader in American custody. A Nov. 6 report in The New York Times, citing the Defense Intelligence Agency document, said he had made the assertions about ties between Iraq and Al Qaeda involving illicit weapons while in American custody.

Mr. Libi was indeed initially held by the United States military in Afghanistan, and was debriefed there by C.I.A. officers, according to the new account provided by the current and former government officials. But despite his high rank, he was transferred to Egypt for further interrogation in January 2002 because the White House had not yet provided detailed authorization for the C.I.A. to hold him.

While he made some statements about Iraq and Al Qaeda when in American custody, the officials said, it was not until after he was handed over to Egypt that he made the most specific assertions, which were later used by the Bush administration as the foundation for its claims that Iraq trained Qaeda members to use biological and chemical weapons.

Beginning in March 2002, with the capture of al Qaeda operative named Abu Zubaydah, the C.I.A. adopted a practice of maintaining custody itself of the highest-ranking captives, a practice that became the main focus of recent controversy related to detention of suspected terrorists.

The agency currently holds between two and three dozen high-ranking terrorist suspects in secret prisons around the world. Reports that the prisons have included locations in Eastern Europe have stirred intense discomfort on the continent and have dogged Secretary of State Condoleezza Rice during her visit there this week.

Mr. Libi was returned to American custody in February 2003, when he was transferred to the American detention center in Guantánamo Bay, Cuba, according to the current and former government officials. He withdrew his claims about ties between Iraq and Al Qaeda in January 2004, and his current location is not known. A C.I.A. spokesman refused Thursday to comment on Mr. Libi's case. The current and former government officials who agreed to discuss the case were granted anonymity because most details surrounding Mr. Libi's case remain classified.

During his time in Egyptian custody, Mr. Libi was among a group of what American officials have described as about 150 prisoners sent by the United States from one foreign country to another since the Sept. 11, 2001 attacks for the purposes of interrogation. American officials including Ms. Rice have defended the practice, saying it draws on language and cultural expertise of American allies, particularly in the Middle East, and provides an important tool for interrogation. They have said that the United States carries out the renditions only after obtaining explicit assurances from the receiving countries that the prisoners will not be tortured.

Nabil Fahmy, the Egyptian ambassador to the United States, said in a telephone interview on Thursday that he had no specific knowledge of Mr. Libi's case. Mr. Fahmy acknowledged that some prisoners had been sent to Egypt by mutual agreement between the United States and Egypt. ''We do interrogations based on our understanding of the culture,'' Mr. Fahmy said. ''We're not in the business of torturing anyone.''

In statements before the war, and without mentioning him by name, President Bush, Vice President Dick Cheney, Colin L. Powell, then the secretary of state, and other officials repeatedly cited the information provided by Mr. Libi as ''credible'' evidence that Iraq was training Qaeda members in the use of explosives and illicit weapons. Among the first and most prominent assertions was one by Mr. Bush, who said in a major speech in Cincinnati in October 2002 that ''we've learned that Iraq has trained Al Qaeda members in bomb making and poisons and gases.''

The question of why the administration relied so heavily on the statements by Mr. Libi has long been a subject of contention. Senator Carl Levin of Michigan, the top Democrat on the Senate Armed Services Committee, made public last month unclassified passages from the February 2002 document, which said it was probable that Mr. Libi ''was intentionally misleading the debriefers.''

The document showed that the Defense Intelligence Agency had identified Mr. Libi as a probable fabricator months before the Bush administration began to use his statements as the foundation for its claims about ties between Iraq and Al Qaeda involving illicit weapons.

Mr. Levin has since asked the agency to declassify four other intelligence reports, three of them from February 2002, to see if they also expressed skepticism about Mr. Libi's credibility. On Thursday, a spokesman for Mr. Levin said he could not comment on the circumstances surrounding Mr. Libi's detention because the matter was classified.

Mr. LEAHY. Late Sunday night, Republican leadership slipped language into a lengthy appropriations conference report that will immunize drug companies against reckless misconduct and will impede our ability to protect our citizens from the threatened avian flu pandemic. This provision is a gift to the drug manufacturers and will likely have a devastating effect on our ability to protect our constituents.

Under the guise of a threatened pandemic, this legislation goes far beyond the scope of vaccine preparedness and includes language that is far more sweeping than any language previously passed by the House or the Senate. Instead of focusing on protecting American families from avian flu or ensuring that victims of any untested vaccine will be compensated for their injuries, the provision simply shields drug companies from any culpability for injuries caused by its actions. The scope of this immunity is so expansive that once the Secretary of Health and Human Services has declared a public health emergency even for a future threat, drug companies would not be held accountable for any injuries or deaths caused by the drugs they manufacture, including drugs that are not specifically used in a pandemic context. This is disgraceful and will deter Americans from taking vaccines and drugs if we ever experience a health crisis.

The only exception to the broad immunity given to drug companies in this proposal is the possibility that a victim could prove that the company

acted with ''willful misconduct.'' Knowingly committing health violations would not even suffice to state a claim. Knowing violations as well as gross negligence would be immunized from accountability. Even if the drug company acted with the intent to harm people, it would nevertheless be immune from criminal conduct unless the Attorney General or Secretary of Health and Human Services initiates an enforcement action against a drug company that is still pending at the time a personal claim is filed. That is unbelievable. I question whether such a role for the Secretary of HHS is even constitutional. Since when do we in Congress allow a political appointee of the administration to determine when, and if, someone injured by willful misconduct can be compensated for their injuries? Professor Erwin Chemerinsky sent a letter yesterday that outlines his concerns regarding the constitutionality of the provision and I ask that his letter be made part of the RECORD.

Passage of the Defense appropriations bill is of vital importance to all of us, but the inclusion of provisions that excuse even gross and deadly negligence on the part of drug companies makes it impossible for many of us to vote for this bill in good conscience. I urge my colleagues to strike the unjustified and extraneous provisions from the Defense appropriations bill in order to act quickly on this important bill.

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

DECEMBER 20, 2005.

DEAR SENATOR: I understand that the Congress is considering legislation that has been denominated as the ''Public Readiness and Emergency Preparedness Act.'' This legislation would give the Secretary of Health and Human Services extraordinary authority to designate a threat or potential threat to health as constituting a public health emergency and authorizing the design, development, and implementation of countermeasures, while providing total immunity for liability to all those involved in its development and administration. In addition to according unfettered discretion to the Secretary to grant complete immunity from liability, the bill also deprives all courts of jurisdiction to review those decisions. Sec. (a)(7). I write to alert the Congress to the serious constitutional issues that the legislation raises.

First, the bill is of questionable constitutionality because of its broad, unfettered delegation of legislative power by Congress to the executive branch of government. Under the nondelegation doctrine, Congress may provide another branch of government with authority over a subject matter, but ''cannot delegate any part of its legislative power except under the limitation of a prescribed standard.'' *United States v. Chicago, M., St. P. & P.R. Co.*, 282 U.S. 311, 324 (1931). Recently, the Supreme Court endorsed Chief Justice Taft's description of the doctrine: ''the Constitution permits only those delegations where Congress 'shall lay down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform.' '' *Clinton v. City of New York*, 524 U.S. 417, 484 (1998)(emphasis in original), quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928). The breadth of authority granted the Secretary without workable guidelines from Congress appears to be the type of ''delegation running riot'' that grants the Secretary a ''roving commission to inquire into evils and upon discovery correct them'' of the type condemned by Justice Cardozo in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 553 (1935)(Cardozo, J., concurring).

Second, the bill raises important federalism issues because it sets up an odd form of federal preemption of state law. All relevant state laws are preempted. Sec. (a)(8). However, for the extremely narrow instance of willful (knowing) misconduct by someone in the stream of commerce for a countermeasure, the bill establishes that the substantive law is the law of the state where the injury occurred, unless preempted. Sec. (e)(2). The sponsors appear to be trying to have it both ways, which may not be constitutionally possible. The bill anticipates what is called express preemption, because the scope of any permissible lawsuits is changed from a state-based to a federally based cause of action. See *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003).

Usually, that type of ''unusually 'powerful' '' preemptive statute provides a remedy for any plaintiff's claim to the exclusion of state remedies. *Id.* at 7 (citation omitted). Here, rather than displace state law in such instances, the bill adopts the different individual laws of the various states, but amends them to include a willful misconduct standard that can only be invoked if the Secretary or Attorney General initiates an enforcement action against those involved in the countermeasure and that action is either pending at the time a claim is filed or concluded with some form of punishment ordered.

Such a provision raises two important constitutional concerns. One problem is that this hybrid form of preemption looks less like an attempt to create a federal cause of action than an direct attempt by Congress to amend state law in violation of *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 (1938) and basic principles of federalism. Although Congress may preempt state law under the Supremacy Clause by creating a different and separate federal rule, see *Crosby* v. *Nat'l Foreign Trade Counc.*, 530 U.S. 363, 372 (2000), it may not directly alter, amend, or negate the content of state law as state law. That power, the Erie Court declared, ''reserved by the Constitution to the several States.'' 304 U.S. at 80. It becomes clear that the bill attempts to amend state law, rather than preempt it with a federal alternative, when one realizes that States will retain the power to enact new applicable laws or amend existing ones with a federal overlay that such an action may only be commenced in light of a federal enforcement action and can only succeed when willful misconduct exists. The type of back and forth authority between the federal and state governments authorized by the bill fails to constitute a form of constitutionally authorized preemption.

The other problem with this provision is that the unfettered and unreviewable discretion accorded the Secretary or Attorney General to prosecute an enforcement action as a prerequisite for any action for willful misconduct violates the constitutional guarantee of access to justice, secured under both the First Amendment's Petition Clause and the Fifth Amendment's Due Process Clause. See *Christopher* v. *Harbury*, 536 U.S. 403, 415 n.12 (2002). In fact, the Court has repeatedly recognized that ''the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances.'' *Bill Johnson's Restaurants* v. *NLRB*, 461 U.S. 731, 741 (1983), citing *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U.S. 508, 510 (1972). First Amendment rights, the Supreme Court has said in a long line of precedent, cannot be dependent on the ''unbridled discretion'' of government officials or agencies. See, e.g., *City of Lakewood* v. *Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988). At the same time, the Due Process Clause guarantees a claimant an opportunity to be heard ''at a meaningful time and in a meaningful manner.'' *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). The obstacles placed before a claimant, including the insuperable one of inaction by the Secretary or Attorney General, raise significant due process issues. The Supreme Court has recognized that official inaction cannot prevent a claimant from being able to go forth with a legitimate lawsuit. See *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422 (1982). The proposed bill seems to reverse that constitutional imperative.

Third, the complete preclusion of judicial review raises serious constitutional issues. The Act, through Sec. 319F–3(b)(7), expressly abolishes judicial review of the Secretary's actions, ordaining that ''[n]o court of the United States, or of any State, shall have subject matter jurisdiction,'' i.e., the power, ''to review . . . any action of the Secretary regarding'' the declaration of emergencies, as well as the determination of which diseases or threats to health are covered, which individual citizens are protected, which geographic areas are covered, when an emergency begins, how long it lasts, which state laws shall be preempted, and when or if he shall report to Congress .

The United States Supreme Court has repeatedly stressed that the preclusion of all judicial review raises ''serious questions'' concerning separation of powers and due process of law. See, e.g., *Johnson* v. *Robison*, 415 U.S. 361 (1974); see also, *Oestereich* v. *Selective Service System Local Board No. 14*, 393 U.S. 233 (1968); *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991); *Reno* v. *Catholic Social Services*, 509 U.S. 43 (1993). Judicial review of government actions has long regarded as ''an important part of our constitutional tradition'' and an indispensable feature of that system, *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973).

The serious constitutional issues raised by this legislation deserve a full airing and counsels against any rush to judgment by the Congress. Whatever the merits of the bill's purposes, they may only be accomplished by consideration that assures its constitutionality.

ERWIN CHEMERINSKY.

Mr. DORGAN. Mr. President, the conference report on the Defense appropriations bill contains $29 billion in disaster relief funding related to hurricanes Katrina and Rita. As part of that emergency package, $49 million is being made available to the National Park Service and the U.S. Fish and Wildlife Service to reimburse cleanup costs and facility repair and restoration costs arising from the hurricanes. As the ranking member of the Interior and Related Agencies Subcommittee, which has jurisdiction over these agencies, I fully support this appropriation. There are, however, two aspects of the funding provision which concern me.

First, the $49 million being provided is less than a quarter of the $220 million in damages suffered by our gulf coast parks and refuges. But not funding these expenses does not make them go away. What I fear will end up happening is that every other park and

every other refuge in the Nation is going to have its 2006 budget reduced as a way of making up the $170 million Congress is not providing. Every park superintendent and every refuge manager in this Nation is struggling to keep up with fixed costs and working to address the maintenance backlog. Taking more money away from them is simply not helpful.

Secondly, I strongly disagree with the instructions that are being given to the National Park Service and the Fish and Wildlife Service with respect to how these funds are to be spent. The funding in this bill is provided through each Agency's construction account. Under Federal law, that is the only purpose for which those funds can be used. They cannot legally be spent on operational expenses, which are funded through different accounts. However, the Statement of Managers, which is the report that accompanies the bill and explains in detail how all of the appropriated dollars are to be spent, explicitly says that the money is available for ''un—reimbursed overtime [pay] and operational costs.''

I think it was a mistake for the administration to forgo asking for reimbursement of operational expenses. Both agencies have incurred substantial costs in that area that must be paid for. But the administration's error should not be compounded by having Congress encourage a Federal agency to violate the law. We could have very easily divided the funding between the operational accounts and the construction accounts, which would have allowed the agencies to properly and legally repay some of their operational costs. But that idea was soundly rejected by the majority in the House of Representatives. And so we are left with a situation where we are explicitly encouraging Federal agencies to use appropriated dollars for purposes other than what they were intended. That, Mr. President, is simply the wrong thing to do.

Mr. KOHL. Mr. President, today I joined many of my colleagues in opposing cloture on the Defense appropriations bill. Regrettably, I was forced to try and slow this bill down because language unrelated to our Nation's defense was inserted into the bill. In a cynical attempt to authorize drilling in the Arctic National Wildlife Refuge, language that in the past has been filibustered, was included in the Defense bill. Using our men and women in the military as a shield, the ANWR bill was put in the Defense bill in a parliamentary game of chicken. Supporters of drilling in ANWR believed that if they included this language in the Defense bill, opponents of drilling in ANWR would never vote to hold up the Defense bill. They were wrong.

I do not enjoy opposing a Defense bill while we have troops in harm's way, but the principle at stake here was too important. We will be sorry if we set the precedent that unpopular provisions can just be rolled into the bill that funds our defense. In the long run, letting that cynical strategy proliferate will hurt our country and the institution of the Senate.

So today, when I opposed cloture, it was not a reflection of my support of our military. I believe in our men and women in uniform and believe that this bill should have been passed months ago. Instead, I opposed cloture because I believe that we should not use the Defense bill as a Trojan Horse to slip through legislation that would not be able to survive under the normal rules of the Senate.

Mr. OBAMA. Mr. President, I rise to speak about the bill before us today.

If any of you are wondering why the American people are so frustrated with the legislative process, why they believe that politics always trumps substance and nothing ever gets done in Washington, this is what they are talking about.

Every single member of this body wants our military to have the funding and the resources it needs to fight the war in Iraq and the war on terror. We all agree on that.

Yet somehow an otherwise noncontroversial bill gets bogged down because some have chosen to use it as a political opportunity to slip in proposals they couldn't get passed through the normal channels of debate and deliberation. The idea here is to add anything you want to a Defense bill, no matter how surprising or controversial, figuring that it will pass since no one would dare cast a vote against our troops.

They may think this is shrewd politics, but it is terrible policy, and it is disrespectful to both our brave men and women in the field and the American people back home.

Now, I have great respect for the Senator from Alaska, and I also respect his passion towards the ANWR debate, even if I disagree with his position. But I strongly believe that if he and other ANWR supporters wish to convince us of that position, they should do so by arguing the merits of the proposal itself, not by sneaking it into a bill none of us want to vote against. Not only does that go against the best traditions of the United States Senate, it goes against the best expectations of the American people when they sent us here.

Aside from critical defense funding for our troops, there are other elements of this bill that this country desperately needs to have passed. There is funding for gulf coast recovery efforts and resources that will help our Nation prepare for a possible avian flu pandemic. I am also pleased that Senator MCCAIN's amendment opposing torture, which was overwhelmingly passed by the Senate, appears in this bill.

Unfortunately, all of this critical funding is being jeopardized by one Senator's desire to ram through a provision that is personally important to him. That is not the way Congress should be conducting its business.

There will be a time and a place for debate on this topic as there has been before. But now is not that time. Not with 180,000 troops in harm's way who need important resources and supplies; not with families from the gulf coast who want a place to go home to; not with the danger of pandemic influenza threatening our shores. Now is the time to respect the legislative process and pass a bill that does not play politics with our troops, so that we can finally return home to our constituents and let them know that we truly did the people's work.

Mr. President, I want to express my strong support for the reauthorization of the Department of Defense, DOD, 1207 program. The 1207 program is designed to ensure that the DOD Federal contracting process does not support or subsidize discrimination. This program must be extended through September 2009 so that the tremendous progress we have made in leveling some of the playing ground for Federal contracting is not lost.

We here in Congress know that there is a long history of keeping out the little guys in government contracting. In the aftermath of Hurricane Katrina, minority-owned and economically disadvantaged companies have had a near impossible time trying to secure some of the billions of dollars of gulf coast reconstruction contracts. Meanwhile, big multinational contractors were given no-bid contracts in the weeks immediately following the hurricane. This double standard is unfortunately all too common, and it is the duty of Congress to ensure that this discrimination does not continue.

Ever since the DOD's 1207 program was first adopted in 1986, racial and ethnic discrimination—both overt and subtle—have continued to erect significant barriers to minority participation in Federal contracting, but the 1207 program helps to correct the problems of discrimination without imposing an undue burden on larger businesses. Without programs like the 1207 program, many contractors would simply revert to their old practices, denying contracts to small companies owned by minorities or the economically disadvantaged. It is clear that the 1207 program is still needed to monitor and secure the gains made and perhaps encourage even greater opportunity for these small businesses.

I am pleased that this bill includes an extension of this important program. I have a letter from a minority-woman owned business detailing some of her experiences with the Department of Defense, and I ask that this letter also be printed in the RECORD.

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

ELYON INTERNATIONAL,
*Vancouver, WA, December 20, 2005.*

DEAR SENATOR, My name is Carmen Nazario. I am a Hispanic woman business owner and Veteran, working in the Information Technology industry. I have been in

business for more than eight years and our company has successfully completed contracts in the private and public sector. I personally have worked in this industry as a practicing professional for over 30 years. My initial entry into the computer technology profession commenced while serving in the army during the Vietnam-era war. I graduated as an honor student from the Adjutant General School on two different occasions while attending various types of computer training and continued in that career path after leaving the military.

I am writing to you because I believe that it is terribly important that you understand that discrimination is still pervasive in the contracting markets across this country. Where I live in Washington State I confront discrimination on a regular basis as I attempt to run my business and earn a living.

I understand that Congress is currently reauthorizing the Department of Defense's 1207 program. This program is of special interest to me because I have attempted to get work with the Defense Department over the past several years to no avail. I feel strongly that discrimination and stereotyping are part of the reason that it is difficult for me, and for other minority business owners. to fully participate in our nation's economy.

I would like to give you some examples of the types of discrimination I have confronted just in the last few years. For the past eight years I have engaged tirelessly in marketing the services of ELYON International. I have experienced an unfavorable business climate towards a Hispanic woman professional, both in the public and private sector in spite of the fact that I have wonderful references and the clients I have previously supported have been very happy with our services.

I have been trying to work with Washington State agencies for over seven years and find it very difficult because Washington State has no minority procurement goals. Although we have been on board with various agencies as pre-qualified vendors by way of the RFP process, I find that the state tends to award contracts to large firms and companies they have been working with for years. As an example, I submitted a well qualified candidate, a minority, who was interviewed as a finalist but not selected and I found out that the work was awarded to another company who had an established track record with the state. (I requested the winning bid.) Washington State's procurement awards to minority companies has drastically decreased to less that 1 percent since implementation of the 1–200 initiative which removed minority procurement goals from State government purchasing. I find this discriminatory in the sense that 99 percent of contracting opportunities are going to nonminority companies. The state is not distributing its wealth to its constituents.

This year we submitted a response to a small business set-aside for Tactical Network Services at Fort Lewis, WA. We had Microsoft as a sub-contractor and used some of their past performance as well as ours. Much of the technology for this response involved Microsoft products. When I requested the winning vendor information I found out it was awarded to a newly formed company, service disabled, who had only been in existence for a few months and whose owners had been previously employed by the incumbent and were partnering with BAE who had acquired the incumbent, DigitalNet (a large company).

Deployable Data Systems, who won the bid, priced it at $2,468,075 and ours was $2,298.107. Ours was $169,968 lower. I requested a debriefing but was given bogus reasons and I also requested a copy of the winning solicitation response but was denied any further information other than price and name of company that received the award. I find these actions totally discriminatory . . . Ft Lewis decision makers knew all along who they where going to award that contract to.

MBEs are being squeezed out of the supply chain for larger deals. Many government contracting opportunities have now been bundled making it only possible for primary suppliers to respond to these larger long-term contract opportunities. In the past I have also proposed to establish a working relationship as a subcontractor to IBM, Anteon, Unisys, Best Consulting, Anderson Consulting (for GSA contract), DMO, Emerald Solutions and many other large established computer technology firms.

A scenario where I proposed to establish a working relationship as a subcontractor, involved IBM. In September of 2002 I requested a list of companies planning to bid on ACES RFP 2002–035–9275, a multi-million dollar RFP, that was up for re-compete for a maximum period of 10 years (IBM previously held contract). I contacted Mary Brennan, Washington's State Department of Social & Health Services RFP coordinator. She first did not want to release the names of the companies bidding and I called the DSHS's Office of Equal Opportunity to express my concern that a 10 year RFP was being released and I wanted to have an opportunity to contact vendors bidding and propose subcontracting services as a MWBE IT vendor. Mary Brennan finally released the information and I contacted all of the companies planning to bid on this RFP (there were only three, primarily out of state companies). IBM was the only one potentially interested in working with my company. They released an email request for me to provide information and resumes of candidates with the requirements that they needed to satisfy. After much effort on my part to coordindate available candidates and submit their information, I received an email from Jack Tompkins dated October 21, with the following message:

''Carmen, I wanted to thank for you responsiveness to our requests for a WebSphere Administrator and Data Manager. For now, we have filled the requirements we had for our proposal. I do not have an immediate need for any of your candidates, but was pleased to see some promising resumes. As we fill positions in the future I'll make certain that you are made aware of our openings.

''Thank again,

''Jack A. Tompkins

''IBM Global Services—State of Washington''

IBM submitted the proposal to the state, but my company was not included as one of its subcontractors even though I received very positive feedback. Of course the State of Washington had no MBE/WBE requirements in the RFP, nor language encouraging prospective bidders to utilize minority firms. Because of the scope of work involved with this RFP and the number of years (ten)—this procurement probably will hit triple digit multi-million dollar expenditure by the State of Washington, yet there was no opportunity for companies such as mine to participate in the state expenditure. The State of WA ended up awarding this multi-million dollar contract to IBM in 2003 and the winning bid had no minority participation. As of today, we have never been contacted by IBM for any sub-contracting work.

This experience as well as several others I had with large Defense/Federal vendors has led me to believe that perhaps it looks good for them on paper to submit information on their MWBE subcontractor utilization (to comply with minority goals) but their intent may not be to really give us subcontract work.

I appreciate the opportunity to share my stories with you. I know that many, many business owners in similar situations confront very similar problems. Still, many business owners are afraid to speak out for fear of losing business or other types of retaliation. Sadly, discrimination is not yet a part of the past in the United States. Until it is, it is very important that you continue to support and enforce programs intended to level the playing field for women and minority contractors.

Thank you for your time and attention.

Sincerely,

CARMEN NAZARIO,
*President.*

Mr. BROWNBACK. Mr. President, I rise to speak to speak on a free-standing provision in title IV of the pending DOD appropriations bill, subtitle A, the Hurricane Education Recovery Act, which prohibits discrimination ''on the basis of . . . sex.'' (Section 107(m)(1)(A)). I want to ensure that this provision will be applied in an abortion-neutral manner—such as parallel provisions that have long governed all educational institutions receiving Federal funds—even though it contains no explicit clarifying language.

Over two decades ago, Federal regulators and others misused statutory language against ''discrimination on the basis of sex'' to argue that procedures, such as abortion, which apply only to women must be treated like any routine health procedure. To end this misinterpretation, abortion-neutral language amending title IX of the Education Amendments of 1972 was enacted as part of the Civil Rights Restoration Act in 1988, 20 U.S.C §1688. When Congress passed the D.C. School Choice Incentive Act of 2003 in January, it incorporated this clarification by reference, Sec. 308(b)(3) of Pub. L. 108–199.

It is therefore important to be clear that nothing in this bill is designed to change this legal status quo in any way. At a time when schoolchildren in so many States are in desperate need of temporary assistance to continue their educations, no one should be seizing upon this emergency legislation as a vehicle for changing current law on abortion. Nor should the devastation wrought by Hurricane Katrina and other disasters be used to justify filing sex discrimination suits against private and public schools that do not facilitate abortions for minor children in their charge. I am confident that Congress had no such intent in crafting this bill and that the U.S. Department of Education will not construe the bill's provision on discrimination ''on the basis of sex'' to require any new policy or practice on abortion in schools.

Mr. NELSON of Florida. Mr. President, while I wholeheartedly support robust funding for our troops, several measures slipped into the Defense appropriations bill were totally extraneous to our military missions. Two such provisions—oil drilling in the Arctic National Wildlife Refuge and complete liability protection for drug companies that manufacture vaccines—

were added to this bill behind closed doors and in the dead of the night.

If unrelated and unpopular measures can be slipped into our Nation's military spending bill at the last moment, without being included in either the House or Senate, open debate on issues and all control over spending has been lost. Lawmakers behind this move held funding for our troops hostage to achieve the interests of the oil and drug industries.

Largely for this reason, dozens of Senators voted for more debate on the Defense appropriations conference report. We hope these unwanted and extraneous provisions will be removed.

As I have stated, I voted to oppose closing off debate on the Defense appropriations bill for several reasons—including the bill's insertion of oil drilling in the Arctic National Wildlife Refuge and liability protection for drug companies that manufacture vaccines. In addition, to my opposition to these specific provisions, I believe the disaster relief provided for in the bill is woefully inadequate for Florida.

Florida was hit by four hurricanes again in 2005. Hurricanes Dennis, Katrina, Rita and Wilma wreaked havoc in South Florida, the Panhandle and even parts of central Florida. These storms caused over $2 billion in agricultural losses. That surpasses the losses from the 2004 hurricane season.

Florida's Agriculture Commissioner, Charles Bronson, said that he has ''never witnessed such extensive devastation to our state's agriculture sectors as that caused by Hurricane Wilma.''

Despite this devastation, the disaster relief in the Defense appropriations bill fails to provide any financial relief to the citrus, sugar, vegetable, tropical fruit or livestock industry.

It is estimated that Florida lost 47 percent of the grapefruit crop and 15 percent of the orange crop—for a total loss of $180 million.

The vegetable industry took a $311 million hit because the fall and winter vegetable crops were growing when Wilma hit.

The sugar industry suffered more than $370 million in losses. One-hundred mile per hour winds not only flattened the cane, but also caused significant structural damage to critical infrastructure such as storage bins and the mill.

Literally, millions of Floridians are still struggling due to these hurricanes; and this bill does little to help them recover.

When this bill goes back to the conference committee, I hope this disaster relief package can be reworked to provide relief for all those who suffered damage in this year's hurricanes.

Mr. KERRY. Mr. President, the fiscal year 2006 Defense Appropriations Act is a vitally important piece of legislation. It funds the operations of the Department of Defense and, in this particular case, the wars in Iraq and Afghanistan.

It is disgraceful that this bill was delayed until the end of the year by an administration that was more interested in lobbying for the right to torture than in meeting the needs of our troops. Now at this late hour, it was further delayed by those who sought to take a bill they knew people would support—funding our troops—and load it up with favors for special interests. With these issues resolved, I am pleased this important legislation has finally passed.

The fiscal year 2006 Defense Appropriations Act includes funding for everything from boots to beans to bullets—everything our Armed Forces need to keep America safe. This bill funds the national defense program at $453.28 billion, including $50 billion in emergency appropriations for on going operations in Iraq and the war on terror.

The legislation funds recent and pending increases in Army end strength, provides a 3.1 percent pay raise to all members of the U.S. military, and increases housing allowances.

It funds the readiness programs that maintain our military's ability to conduct operations around the world, whether that means flying hours for pilots, steaming days for Navy crews, spare parts, training, or maintenance.

The legislation funds major acquisition programs in every service—whether the C–17, PAC–3 missiles, the Army's Stryker, or the Navy's DD–X program. It also funds $72.1 billion in research development test and evaluation. That includes future systems—whether air, land, space or sea systems—as well as important medical research that will bring our soldiers the most advanced medical treatment on future battlefields. The future American military, its capabilities, and its personnel are all funded in this legislation.

The $50 billion emergency appropriation included in this legislation funds on going operations in Iraq, Afghanistan, and wherever the war on terror takes American forces. That total includes money for combat pay, death gratuities, and other allowances. It includes $142.8 million for body armor and other personal protection equipment and $1.4 billion for the Joint Improvised Explosive Device Task Force. It funds important programs to replace lost or damaged helicopters and ground vehicles and restocks ordinances used in operations. It also includes $1 billion to meet immediate equipment deficiencies in the National Guard and Reserves.

The Defense appropriations bill is one of the most important pieces of legislation the Congress enacts each year. It is always tempting to some to try to attach riders to it that have nothing to do with the defense of our country or the courageous Americans who make up the U.S. military. I am pleased that, at long last, the Senate finally moved this vital legislation that is so important to our troops.

Mr. President, I know there will be some who criticize this legislation because of the way it was ultimately enacted. I share those frustrations. I wish that we could have passed a clean defense appropriations act 3 or 4 months ago to avoid the challenges we have seen in the last days. It is regrettable that we did not, but I am happy that this legislation has finally passed so that our troops receive the resources they need to protect this country.

Mr. LIEBERMAN. Mr. President, we are in a period of extended debate to resolve the remaining issues related to the Defense appropriations bill, so I wanted to take a minute to address the serious avian flu issue that is before us. While I am concerned that we will need the full funding request the administration sought, if we approve the avian flu proposal, we will at least be advancing some $3 billion. I want to stress the importance of global wild bird surveillance systems as part of my comprehensive flu plan.

I am pleased that the avian flu provisions include authorizing language and funds to set up a wild bird surveillance network as well as other essential elements of avian flu public health preparedness. If passed by Congress and signed by the President, this will assure that we have a comprehensive approach to what may become a real world threat. We do not want to have piecemeal solutions or be simplistically reactive when it comes to the public's health.

The avian flu provision we have been considering today states that part of $150 million is designated to carry out global and domestic disease surveillance, which includes international surveillance to track influenza strains as a way of focusing limited resources on at-risk populations. The conferees have pointed out specifically the importance of migratory bird tracking in predicting the spread of avian influenza and encourage the CDC to ensure that this important activity is part of its surveillance activities. I am pleased with this language that acknowledges a key part of the preparedness puzzle to which, frankly, few people have given attention—wild bird sentinels and the intimate connection between animal and human health. We cannot separate the two.

As we all know, the potential for an influenza pandemic is increasing as the H5N1 virus has now moved swiftly across Asia, Russia, Turkey, and now the EU, killing millions of domestic poultry and over 60 humans to date. History and science tell us that wild birds and movements of poultry have the potential to spread deadly avian influenza viruses. The 1918 influenza epidemic that killed an estimated 40 million people worldwide was an avian-origin viral strain. We must act now to ensure that this does not happen again. We have the tools to track the movement of this virus. We just need to increase and strengthen them.

In October, I introduced a bill, S. 1912, to do exactly this. This month, Representatives DELAURO and LOWEY, with the cosponsorship of Representative CASE, introduced an identical bill

in the House of Representatives, H.R. 4476, to provide funds supporting an early warning system and real-time data network for global avian influenza surveillance. Senator BROWNBACK has also been supportive of these efforts to urge Congress to examine ways to boost our prevention and preparedness efforts via an international surveillance network.

In fact, the Senate passed appropriations for such an effort in the Senate Labor-HHS appropriations bill for fiscal year 2006. This was work from our colleagues Senators SPECTER and HARKIN, who again realized the importance of fighting the threat of avian flu from multiple fronts including funds for vaccines and antivirals but also with the establishment of an international wild bird surveillance network.

The surveillance network contemplated by the avian flu proposals we have been considering should be designed to be an early warning and tracking system to monitor avian viruses and their mutations and reassortments, as carried by wild birds. The provision would require expansion the Centers for Disease Control and Prevention's Influenza Branch's wild bird surveillance program, which currently is small. Specifically, it is our intent that the Centers for Disease Control and Prevention's Influenza Branch, CDC, with expertise in analyzing ornithological and animal samples for infectious diseases, and other national partners, such as the US Agency for International Development, USAID, with expertise in working with international partners and coalitions, would partner with one or more nongovernmental organizations that meet the following criteria: have extensive global wildlife health experience in tracking disease in wild birds, including free-ranging, captive, and wild-bird species using an international and extensive field program and network with projects in 50 or more countries to allow for the collection and dissemination of data around the world; have proven ability in identifying avian influenza, specifically H5N1 and other infectious diseases, in wild birds; and have accredited zoological facilities in the United States, with the capacity to analyze, store, and interpret samples and compile data.

Such tracking allows us to predict the spread of the virus and then to focus limited resources and prepare communities in the flight path of wild birds, as the conference report notes. Potential interventions include providing available antivirals or vaccines to those at-risk, enhancing biosecurity at poultry farms, and even keeping people indoors should surveillance information warrant it. By tracking wild birds, as these provisions require, we may even be able to produce an avian flu vaccine faster by understanding which variant of avian influenza virus is the killer. The current H5N1 virus is potentially not the one that could cause widespread devastation to humans. Again, the conference report recognizes the importance of tracking viral strains and has provided the CDC with funding to do so.

Just as we track hurricanes as they begin as a tropical storm, we must track wild birds and the viral storms they carry over oceans and continents and share that data with the world.

At least $10 million of the funds available in this proposal in 2006 should be available to the CDC to work with a national partner such as USAID and one or more eligible NGOs with the expertise and the criteria previously outlined and other supporting international partners to establish a strong global wild bird surveillance system.

This proposal would help ensure we have an organized, near real-time, virtual library that would allow U.S. Government agencies, wildlife conservation organizations, and public health organizations to track both the spread of avian viruses and their reassortments and mutations, which are integral to understanding how a virus might change to permit human to human transfer.

Ten million dollars is a small sum in comparison to the tens of billions of dollars required for vaccine research and antiviral stockpiling. Vaccines and stockpiling are our current focus and we should be thinking about them—but it is equally important to think about being prepared for outbreaks and preventing a pandemic from ever becoming a reality.

As we speak, information is being collected and analyzed all over the United States and the world. But while we are collecting piles of data, it is not being stored in the kind of organized manner needed to make it available for easy study and response. The information we have, I fear, is scattered like books with no library to contain them and no librarian to locate them.

Again, I would like to thank leaders in the Senate and the House, including Senators SPECTER, HARKIN, and BROWNBACK, and Representatives DELAURO, LOWEY, and CASE, for their work in preparing our Nation for a possible pandemic. We must address the treatment, surveillance, and prevention but, also, critically the global wildfowl surveillance; this addresses a big gap that is easy to forget about. It is the big bird in the room.

Wild birds can spread this virus and could potentially carry it to the United States. I thank and urge my colleagues to continue supporting flu legislation with essential provisions such as this one, which surveys wild birds with NGOs who have the international networks and the capacity to connect all the dots, so when a flu pandemic does or does not happen, we are better prepared.

Mr. DURBIN. Mr. President, I rise to speak about the Detainee Treatment Act of 2005, which is included in the Defense Appropriations conference report.

I will submit a similar statement into the RECORD for the Defense authorization conference report because the Detainee Treatment Act of 2005 is also included in the Defense authorization bill.

The Detainee Treatment Act includes two provisions that were adopted in the Senate version of the Defense Authorization bill: the McCain Antitorture amendment and the Graham-Levin Detainee amendment.

I was an original cosponsor of the McCain Antitorture amendment. I have spoken at length about the vital importance of this amendment on several other occasions. At this time, I simply want to reiterate a couple of points.

Twice in the last year and a half, I have authored amendments to affirm our Nation's longstanding position that torture and cruel, inhuman, or degrading treatment are illegal. Twice, the Senate unanimously approved my amendments. Both times, the amendments were killed behind the closed doors of a conference committee—at the insistence of the Bush administration.

I am pleased that the administration has changed its position. As a result, it will now be absolutely clear that under U.S. law all U.S. personnel are prohibited from subjecting any detainee anywhere in the world to torture or cruel, inhuman, or degrading treatment.

The amendment defines cruel, inhuman, or degrading treatment as any conduct that would constitute the cruel, unusual, and inhumane treatment or punishment prohibited by the U.S. Constitution if the conduct took place in the United States. Under this standard, abusive treatment that would be unconstitutional in American prisons will not permissible anywhere in the world.

Let me give you some examples of conduct that is clearly prohibited by the McCain amendment.

''Waterboarding'' or simulated drowning is a technique that was used during the Spanish Inquisition. It is clearly a form of torture. It creates an overwhelming sense of imminent death. It amounts to a clear-cut threat of death akin to a mock execution, which is expressly called ''mental torture'' in the U.S. Army Field Manual.

Sleep deprivation is another classic form of torture which is explicitly called ''mental torture'' in the U.S. Army Field Manual. It has been banned in the United Kingdom and by a unanimous Israeli Supreme Court, and the U.S. Supreme Court has repeatedly declared it unconstitutional, once citing a report that called it ''the most effective form of torture''.

The amendment also clearly bans so-called stress positions or painful, prolonged forced standing or shackling. Again, the U.S. Army Field Manual expressly calls these techniques ''physical torture.'' Moreover, one of the most recent Supreme Court cases on the extent of the prohibitions on ''cruel and unusual'' punishments expressly

outlawed the use of painful stress positions, denouncing their ''obvious cruelty'' as ''antithetical to human dignity.''

The amendment bans the use of extreme cold, or hypothermia, as an interrogation tactic. Hypothermia can be deadly. Clearly it is capable of causing severe and lasting harm, if not death, and consequently is banned by both the Field Manual and the Constitution.

The amendment bans punching, striking, violently shaking or beating detainees. Striking prisoners is a criminal offense and clearly unconstitutional. Moreover, while assaults like slapping and violent shaking, may not seem as dangerous as beatings, shaking did, in fact, kill a prisoner in Israel, and the tactic has been banned by the Israeli Supreme Court. Numerous U.S. Supreme Court cases likewise prohibited striking prisoners.

The amendment bans the use of dogs in interrogation and the use of nakedness and sexual humiliation for the purpose of degrading prisoners.

No reasonable person, given the text of the amendment, the judicial precedents, and common sense, would consider these techniques to be permitted. Any U.S. official or employee who receives legal advice to the contrary should think twice before defying the will of the Congress on this issue.

The McCain antitorture amendment will make the rules for the treatment of detainees clear to our troops and will send a signal to the world about our Nation's commitment to the humane treatment of detainees.

I want to express again my opposition to the Graham-Levin amendment.

The amendment would essentially eliminate habeas corpus for detainees at Guantanamo Bay. In so doing, it would apparently overturn the Supreme Court's landmark decision in Rasul v. Bush.

No one questions the fact that the United States has the power to hold battlefield combatants for the duration of an armed conflict. That is a fundamental premise of the law of war.

However, over the objections of then-Secretary of State Colin Powell and military lawyers, the Bush administration has created a new detention policy that goes far beyond the traditional law of war. The administration claims the right to seize anyone, including an American citizen, anywhere in the world, including in the United States, and to hold him until the end of the war on terrorism, whenever that may be. They claim that a person detained in the war on terrorism has no legal rights. That means no right to a lawyer, no right to see the evidence against him, and no right to challenge his detention. In fact, the Government has argued in court that detainees would have no right to challenge their detentions even if they claimed they were being tortured or summarily executed.

U.S. military lawyers have called this detention system ''a legal black hole.''

Defense Secretary Rumsfeld has described the detainees as ''the hardest of the hard core'' and ''among the most dangerous, best trained, vicious killers on the face of the Earth.'' However, the administration now acknowledges that innocent people are held at Guantanamo Bay. In late 2003, the Pentagon reportedly determined that 15 Chinese Muslims held at Guantanamo are not enemy combatants and were mistakenly detained. Almost 2 years later, those individuals remain in Guantanamo Bay.

Last year, in the Rasul decision, the Supreme Court rejected the administration's detention policy. The Court held that detainees at Guantanamo have the right to habeas corpus to challenge their detentions in Federal court. The Court held that the detainees' claims that they were detained for years without charge and without access to counsel ''unquestionably describe custody in violation of the Constitution, or laws or treaties of the United States.''

The Graham amendment would protect the Bush administration's detention system from legal challenge. It would effectively overturn the Supreme Court's decision. It would prevent innocent detainees, like the Chinese Muslims, from challenging their detention.

However, I do want to note some limitations on the scope of the Graham-Levin amendment.

A critical feature of this legislation is that it is forward looking. A law purporting to require a Federal court to give up its jurisdiction over a case that is submitted and awaiting decision would raise grave constitutional questions. The amendment's jurisdiction-stripping provisions clearly do not apply to pending cases, including the Hamdan v. Rumsfeld case, which is currently pending before the Supreme Court. In accordance with our traditions, this amendment does not apply retroactively to revoke the jurisdiction of the courts to consider pending claims invoking the Great Writ of Habeas Corpus challenging past enemy combatant determinations reached without the safeguards this amendment requires for future determinations. The amendment alters the original language introduced by Senator GRAHAM so that those pending cases are not affected by this provision.

The amendment also does not legislate an exhaustion requirement for those who have already filed military commission challenges. As such, nothing in the legislation alters or impacts the jurisdiction or merits of the Hamdan case.

Nothing in the legislation affirmatively authorizes, or even recognizes, the legal status of the military commissions at issue in Hamdan. That is the precise question that the Supreme Court will decide in the next months. Right now, the military commissions are legal under a decision of the DC Circuit, and this amendment reflects, but in no way endorses that present status. It would be a grave mistake for our allies around the world to think that we are endorsing this system at Guantanamo Bay—a system that has produced not a single conviction in the 4 years since the horrible attacks of September 11, 2001.

This provision attempts to address problems that have occurred in the determinations of the status of people detained by the military at Guantanamo Bay and elsewhere. It recognizes that the Combatant Status Review Tribunal, CSRT, procedures applied in the past were inadequate and must be changed going forward. As the former chief judge of the U.S. Foreign Intelligence Surveillance Court found, in In Re Guantanamo Detainee Cases, the past CSRT procedures ''deprive[d] the detainees of sufficient notice of the factual bases for their detention and den[ied] them a fair opportunity to challenge their incarceration,'' and allowed ''reliance on statements possibly obtained through torture or other coercion.'' Her review ''call[ed] into serious question the nature and thoroughness'' of the past CSRT process. The former CSRT procedures were not issued by the Secretary of Defense, were not reported to or approved by Congress, did not provide for final determinations by a civilian official answerable to Congress, did not provide for the consideration of new evidence, and did not address the use of statements possibly obtained through coercion.

To address these problems, this provision requires the Secretary of Defense to issue new CSRT procedures and report those procedures to the appropriate committees of Congress; it requires that going forward the determinations be made by a Designated Civilian Official who is answerable to Congress; it provides for the periodic review of new evidence; it provides for future CSRTs to assess whether statements were derived from coercion and their probative value; and it provides for review in the D.C. Circuit Court of Appeals for these future CSRT determinations.

Mr. FEINGOLD. Mr. President, the annual Defense Appropriations bill is rightly considered a priority most years, and Congress typically completes its work on this important bill early in the year. This year, however, progress on this bill was suspended largely because of Republican political maneuvering. I supported the Senate version of this bill, but a very different bill emerged from conference. That conference report was hijacked by the Republican leadership in a cynical effort to try to pass controversial provisions that have nothing to do with our defense. By jeopardizing funding for our brave men and women in uniform, and attempting to circumvent the rules that govern the Senate, those leaders placed their own narrow interests above those of the country and this institution.

The most blatant abuse was the insertion into the conference report of a

provision that appeared in neither bill to open the Arctic National Wildlife Refuge to drilling. I have already addressed the Senate twice this week on why that provision had no place in this conference report and I am pleased that my colleagues have joined me in sending a clear message that we will not tolerate attempts to hold vital funding hostage to unrelated special interest provisions.

While we were successful in removing the Arctic provisions, I remain very troubled about provisions included in the emergency funds slated for pandemic influenza preparedness. While I have long advocated for pandemic influenza preparedness funding, and while I am pleased that $3.8 billion is provided for this purpose, I am deeply concerned about the inclusion of far-reaching liability protections for health care providers and vaccine manufacturers in this conference report. It is an abuse of the appropriations process to incorporate such sweeping legal protections into a measure providing funds for the military.

The provisions inserted in the conference report would exempt vaccine producers from civil liability for injuries caused by vaccines, unless the health care provider or vaccine manufacturer acted with willful misconduct. This language is extremely far-reaching. Plaintiffs would need to prove that the health care providers or vaccine manufacturers acted intentionally, acted without justification, and disregarded known or obvious risks that the harm would outweigh the benefit. This will be extremely difficult for plaintiffs to establish. Furthermore, disregarding the advice of public health experts, the language fails to provide meaningful injury compensation provisions to help those injured by vaccines. These protections for health care providers and vaccine manufacturers are unparalleled, and it is painfully clear that our leadership in Congress and in the White House is not listening to the concerns of first responders, families, or public and global health experts. They are listening only to the businesses and industries that would use the threat of pandemic influenza as an opportunity to help their own profit margins.

Mr. President, I also object to the inclusion of certain provisions of the Hurricane Education Recovery Act in the Department of Defense Appropriations bill. More than 370,000 elementary and secondary students have been displaced as a result of Hurricane Katrina. Schools across the country, including some in Wisconsin, have opened their doors to these students. I strongly support efforts to assist the schools that are welcoming these students as they continue to work to make this transition and school year go as smoothly as possible.

But I am troubled by key provisions of the legislation. For example, Section 107 of the Act would allocate Federal funding to go directly through State agencies to local school districts where displaced students have enrolled in public or private schools. The local school districts, which are government agencies, would then be responsible for issuing direct payments to public and private schools educating displaced students. Earlier this year, the Senate soundly defeated a proposal to provide vouchers directly to parents with little in the way of civil rights protections. The Senate subsequently passed a measure that, like the measure now before this body, would have passed taxpayer money to private schools through local public school districts. I had grave concerns about that provision, and I am even more troubled that the provisions before us do not include even the modest attempts at civil rights and other protections that were included in the Senate passed language. While I believe the supporters of this act are well-intentioned, I am concerned that Senate passage of this measure would create a troubling precedent with regard to taxpayer-funded school vouchers.

I oppose school vouchers because such programs funnel taxpayer money away from the public schools that this funding is intended to support and instead direct this funding to private schools that do not have to adhere to the same Federal, State, and local accountability and civil rights laws and regulations that apply to public schools. I strongly support providing assistance to the students and schools that have been affected by Hurricane Katrina, but we should do so within existing Federal laws that allow local public school districts to provide specific educational services—rather than direct funding—to private schools.

Mr. President, I also object to the across-the-board cut to discretionary programs, including education programs, that was inserted in this conference report. The Labor-HHS-Education appropriations bill already cuts or allows for only nominal increases in funding for education. This across-the-board cut would magnify the damage done by that appropriations bill, which awaits final action. If both the across-the-board cut and the Labor-HHS-Ed appropriations bill are adopted, total Federal education funding would be cut for the first time in a decade, Funding would be cut for No Child Left Behind, at a time that we are still requiring States to comply with testing all students in reading and math in grades 3–8 for the first time this school year. Title I funding would be cut for the first time in 13 years, hurting children that are currently eligible to receive Title I services. The Federal share of special education costs would be cut for the first time in a decade forcing States and local school districts to pick up the slack. And I regret that the maximum Pell Grant award would be frozen for the fourth year in a row at $4,050.

Mr. President, reducing funding for our nation's schools is not the message we should be sending to our youth. We need to find ways to provide an excellent K-12 education for all of America's children and find ways to make college more affordable for young people now and in the future. Cutting funding for these various programs is not the answer and this across-the-board cut is particularly regrettable. I strongly support reducing our budget deficit and have long promoted measures, such as PAYGO, that would help us toward that goal. But cutting funding for those most in need is not the solution.

I am pleased that the conference report sends such a strong message to the administration about the treatment of detainees by adopting the amendment of the senior Senator from Arizona. The lack of a clear policy regarding the treatment of detainees has been confusing and counter-productive. It has left our men and women in uniform in the lurch with no clear direction about what is and is not permissible. This failure on the part of the administration has sullied our reputation as a Nation, and hurt our efforts to promote democracy and human rights in the Arab and Muslim worlds. I have been proud to support Senator MCCAIN's amendment on interrogation policy because it should help to bring back some accountability to the process and restore our great Nation's reputation as the world's leading advocate for human rights.

I am disappointed with the mixed messages that the Senate continues to send to the administration and the country on issues related to the detainees held at Guantanamo Bay. In addition to the important McCain amendment on torture, the conference report also includes the Graham amendment, which remains deeply troubling because of the restrictions it places on judicial review of detainees held at Guantanamo. However, it is important to note that the provision is limited in critical ways. The provision on judicial review of military commissions covers only ''final decisions'' of military commissions, and only governs challenges brought under that provision. In addition, the language in Section 1405(e)(2) that prohibits ''any other action against the United States'' applies only to suits brought relating to an ''aspect of detention by the Department of Defense.'' Therefore, it is my understanding that this provision would not affect the ongoing litigation in Hamdan v. Rumsfeld before the Supreme Court because that case involves a challenge to trial by military commission, not to an aspect of a detention, and of course was not brought under this provision. Furthermore, it is important to make clear that this provision should not be read to endorse the current system of trial by military commission for those at Guantanamo Bay. This provision reflects, but certainly does not endorse, the existing status of those military commissions, which is that they are currently legal under a decision of the D.C. Circuit.

However, the Supreme Court has not yet addressed the legality of such military commissions, and this amendment should not be read as any indication that Congress is weighing in on that issue. While I would have strongly preferred that this amendment not be included in the conference report, I think it is important to note these limitations on its practical effect.

In closing, Mr. President, I am pleased that I was able to vote for a bill to provide our brave men and women in uniform with the funding they need. But I am disappointed with the long and winding road that it took to get to this point. I hope that Republican leaders are on notice that the Senate will not turn a blind eye when they break the rules and put their own narrow interests above those of the country and the troops.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Arizona (Mr. CHAFEE), the Senator from South Carolina (Mr. DEMINT), the Senator from New Hampshire (Mr. GREGG), and the Senator from Arizona (Mr. MCCAIN).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT), would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. DODD), and the Senator from Iowa (Mr. HARKIN) are necessarily absent.

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

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 366 Leg.]

YEAS —93

| | | |
|---|---|---|
| Akaka | Domenici | McConnell |
| Alexander | Dorgan | Mikulski |
| Allard | Durbin | Murkowski |
| Allen | Ensign | Murray |
| Baucus | Enzi | Nelson (FL) |
| Bayh | Feingold | Nelson (NE) |
| Bennett | Feinstein | Obama |
| Biden | Frist | Pryor |
| Bingaman | Graham | Reed |
| Bond | Grassley | Reid |
| Boxer | Hagel | Roberts |
| Brownback | Hatch | Rockefeller |
| Bunning | Hutchison | Salazar |
| Burns | Inhofe | Santorum |
| Burr | Inouye | Sarbanes |
| Byrd | Isakson | Schumer |
| Cantwell | Jeffords | Sessions |
| Carper | Johnson | Shelby |
| Chambliss | Kennedy | Smith |
| Clinton | Kerry | Snowe |
| Coburn | Kohl | Specter |
| Cochran | Kyl | Stabenow |
| Coleman | Landrieu | Stevens |
| Collins | Lautenberg | Sununu |
| Conrad | Leahy | Talent |
| Cornyn | Levin | Thomas |
| Craig | Lieberman | Thune |
| Crapo | Lincoln | Vitter |
| Dayton | Lott | Voinovich |
| DeWine | Lugar | Warner |
| Dole | Martinez | Wyden |

NOT VOTING —7

| | | |
|---|---|---|
| Chafee | Dodd | McCain |
| Corzine | Gregg | |
| DeMint | Harkin | |

The conference report was agreed to.

## VITIATION OF VOTE—H.R. 1815

The PRESIDING OFFICER. Under the previous order, the cloture vote on the conference report on H.R. 1815 is vitiated.

Mr. WARNER. Mr. President, I am proud to bring the Conference Report on the National Defense Authorization Act for Fiscal Year 2006 before the Senate for final passage. This has been a long and difficult conference, but we have achieved our goal of providing the necessary authorities and resources for our men and women in uniform to defend the freedom of America.

I thank my colleague and partner for these 27 years we have served together in the Senate, the senior Senator from Michigan, CARL LEVIN, for his consistently constructive help and leadership in bringing this important legislation to the floor.

An undertaking of this magnitude is ultimately a bipartisan, bicameral effort. Consequently, there are many people deserving of recognition. I want to thank all of our subcommittee chairs and ranking members for their tireless efforts. I also want to thank Chairman DUNCAN HUNTER and Congressman IKE SKELTON for their leadership and teamwork in producing this conference agreement.

This conference agreement could not have been reached without our dedicated, professional staff. I especially want to recognize the unwavering leadership of the Committee Staff Director, Charlie Abell and the Democratic Staff Director, Rick DeBobes, together with their staff, in bringing this process to a successful conclusion.

As we consider this legislation, we remain a nation at war. This year marks the fourth year in the global war on terrorism. On September 11, 2001, our Nation awakened to a terrorist attack. From this dark hour, our Nation quickly emerged stronger and more united because our Armed Forces, like the generations that preceded them, responded to the call of duty in Operation Enduring Freedom, Operation Iraqi Freedom, and elsewhere around the world in the cause of freedom.

Hundreds of thousands of soldiers, sailors, airmen, marines, active and Reserve components, and countless civilians continue to serve valiantly around the world—from Iraq and Afghanistan to the Persian Gulf, Europe, Africa, and Korea—to secure peace and freedom. All Americans are proud of what our military has accomplished. Their sacrifices and service have removed obstacles to freedom and democracy in the regions of the Middle East and Asia.

We remain mindful that the defense of our homeland begins on distant battlefields. To the extent that we can prevent or contain the threats on these battlefields or potential battlefields, the less likely that we will experience a threat here at home. The threats to our Nation and the ongoing war on terrorism demand increased investment in our national security.

As we begin this debate, I remain mindful that no military victory is gained without significant sacrifice. I ask that we pause to remember those who died in the defense of our freedom, and the many others who were wounded. We honor their sacrifices and service. On behalf of a grateful Nation, we salute you. They and their families deserve our gratitude and unwavering support.

This year, the House and Senate conferees confronted especially difficult challenges affecting our Nation's security. These issues included U.S. policy on Iraq, detainee policy, and the Navy shipbuilding budget. With respect to these issues, I believe that the conferees reached a balanced agreement.

Overall, the conferees authorized funding of $441.5 billion in budget authority for defense programs in fiscal year 2006, an increase of $20.9 billion—or 3.1 percent in real terms—above the amount authorized by the Congress for fiscal year 2005.

The conference report underscores some key defense priorities critical to our national security, including authorities and resources to win the global war on terrorism and support for the men and women of the Armed Forces who are fighting so bravely in the global war on terrorism. Specifically, the conferees added $586.4 million over the President's budget request for combating terrorism. The conferees also authorized $50.0 billion in emergency supplemental funding for fiscal year 2006 for activities in support of operations in Iraq, Afghanistan, and the global war on terrorism.

The conferees further agreed to enhance congressional oversight of ongoing military operations in Iraq, Afghanistan, and the global war on terrorism, including uniform standards for interrogation operations, while removing the burden of litigation from vital intelligence activities. The conference report also includes a 3.1 percent pay raise for all military personnel.

In addition, the conference report contains some provisions of which I am very proud that emphasizes our commitment to homeland defense, force protection, recruiting and retention of military personnel, quality of life programs, and modernization and transformation efforts.

To enhance the ability of the Department of Defense to fulfill its homeland defense responsibilities, the conferees agreed to: authorize $115.2 million for homeland defense and counterterrorism, including $19.8 million for specially trained and equipped teams to support civil or military authorities in the event of a chemical, biological, radiological, nuclear or high-explosive

attack or event; and enhance the Department's working relationship with the Department of Homeland Security for purposes of leveraging dual-use assets in conducting homeland defense and homeland security missions.

To rapidly deploy and acquire the full range of force protection capabilities for deployed forces, the conferees agreed to authorize an additional $610.0 million for up-armored high mobility multipurpose wheeled vehicles and wheeled vehicle add-on ballistic protection to provide force protection for soldiers in Iraq and Afghanistan; designate an executive agent for a joint research and treatment effort to treat combat blast injuries resulting from IEDs, rocket propelled grenades, and other attacks; and facilitate the rapid deployment of new technology and tactics and the rapid deployment of equipment to counter the threat of improvised explosive devices.

To improve recruiting goals and retention of military personnel, the conferees agreed to create new and better incentives to meet the challenge of recruiting for the All Volunteer Force; and ensure the retention of experienced personnel in the active-duty ranks, in the Reserve, and in the National Guard.

To continue its commitment to quality health care for all beneficiaries, the conferees agreed to enhance access to health care coverage under TRICARE for every member of the Selected Reserve and their families, with Government subsidies based on new categories of eligibility.

To continue necessary modernization and transformation efforts, the conferees agreed to authorize an increase of $159.5 million for Navy Shipbuilding to accelerate the CVN–78 aircraft carrier, the LHA (R) amphibious ship, and the second DD(X) destroyer of the class. Much more must be done, however, to achieve stability in the Navy's shipbuilding budget and to protect this fragile sector of our industrial base.

I have a list of some of the highlights of this conference report that I ask unanimous consent to be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. WARNER. Each year since 1961, the House and Senate have reached a conference agreement on, and the President has signed into law, a National Defense Authorization Act. I now call upon my colleagues in this chamber to fulfill our responsibility and pass the annual Defense authorization bill, as has been the tradition of the Senate for each of the past 45 years. This is the 27th year that I have had the privilege of working on this important legislation.

I believe this conference report is a strong bipartisan bill that serves the interests of the men and women of our Armed Forces and of our Nation today. We must send a strong message of support to the men and women in uniform serving on the distant outposts throughout the world. I can think of no better way to honor their sacrifices and service, and that of their families than with the passage of the National Defense Authorization bill. This conference report provides the authorities and resources to win the global war on terrorism, while safeguarding Americans at home. It sustains the current readiness of the Armed Forces and provides the resources to prepare them for the future.

I yield the floor.

EXHIBIT 1

APPENDIX A: KEY MILITARY PERSONNEL PROVISIONS—CONFERENCE AGREEMENT NDAA 2006 (H.R. 1815)

Active End Strength:

Increases Army end strength by 10,000 to 512,400.

Increases USMC end strength by 1,000 to 179,000.

Pay Raise: Provides 3.1 percent pay raise. The raise is .5 percent above private sector raises and reduces the pay gap to 4.6 percent from 13.5 percent in fiscal year 1999 culminating seven years of enhanced pay raises.

Hardship Duty Pay: Increases maximum monthly rate from $300 to $750.

Assignment Incentive Pay: Increases the maximum monthly rate from $1,500 to $3,000.

Servicemembers' Group Life Insurance (SGLI): Requires the Secretary of Defense to pay the premium for a minimum coverage of $150,000 while members who participate in the SGU program are assigned to the other OIF/OEF theater. Also authorizes the Secretary to pay for a larger amount of coverage.

Active Duty Recruiting and Retention Initiatives:

Enlistment bonus—Increases maximum from $20,000 to $40,000.

Reenlistment bonus—Increases maximum active duty from $60,000 to $90,000.

New recruiting incentive programs—Authorizes Army to develop and implement programs following 45 days notice to Congress.

Recruit referral bonus—Authorizes Army (active duty, reserve, and National Guard) to pay $1,000 to service members who refer recruit candidates for enlistment and those candidates complete technical training.

Enlistment age—Increases the maximum from 35 years of age to 42.

Service transfer bonus—Authorizes a new maximum bonus of $2,500 for service members who transfer to armed services requiring skills and experience.

Thrift Savings Plan (TSP)—Authorizes service secretaries to enter agreement with new recruits to pay matching contributions to the TSP and directs the Army to conduct a pilot program on the attractiveness of matching TSP contributions to new recruits.

Weight allowances for shipping household goods—Increases allowances for noncommissioned officers in grades E–7 and above.

Reserve Compensation and Benefits:

Income Replacement—Authorizes the Secretary of Defense to pay involuntarily mobilized reserve members on a monthly basis the amount necessary to replace the income differential between their military compensation and the average monthly income received by the member during the twelve months preceding mobilization. Reserve members would be eligible for the income replacement payment for any full month following the date that the member completes 18 continuous months of service on active duty or 24 months on active duty during the previous 60 months, or for any month during a mobilization that occurs within 6 months of the member's last active duty tour. Payments would be limited to a maximum of $3,000 each month.

Basic allowance for housing (BAH)—Eliminates an inequity in BAH payments for reservists mobilized for less than 140 days by authorizing reservists to receive the same BAH as active duty members when mobilized for periods greater than 30 days.

Critical skill retention bonus—Authorizes reservists to be paid under the active duty program up to a maximum of $100,000 over the course of a career.

Enlistment and affiliation bonus—Increases the maximum amount from $15,000 to $20,000.

Reenlistment bonus—Extends the period during which bonuses may be paid from 16 years of service to 20 years of service with enlistments continuing till 24 years of service.

Survivor Benefits:

Death Gratuity—Extends an increase to $100,000 to all military deaths—(not just combat-related deaths as contemplated in the Tsunami Emergency Supplemental, 2005). Makes payment of the $100,000 amount retroactive to include all military deaths that occurred on or after October 7, 2001. Makes additional retroactive death gratuity payments of $150,000 to survivors of all military deaths, not just combat-related deaths, to compensate for the increase in Servicemembers' Group Life Insurance coverage from $250,000 to $400,000 that became effective for all military members on May 11, 2005.

Survivors in Family Housing—Extends the period that survivors of members who die on active duty may remain in family housing or received basic allowance for housing from 180 days to 365 days.

Survivors home of selection move—Extends the period of time allowed for surviving family members of members who die on active duty to select a permanent residence from one year to three years.

Wounded Member Benefits:

Special pay during medical rehabilitation—Authorizes the secretary concerned to pay $430 per month to a service member with an injury or illness sustained in a combat operation or zone designated by the Secretary of Defense. The pay would terminate at the end of the first month which the member is paid a benefit under the traumatic injury rider of the Servicemembers' Group Life Insurance (SGLI) or is no longer hospitalized in a military treatment facility or in a facility under the auspices of the military health care system.

Payment for meals while receiving medical care—Extends the authority for members to not pay for meals received at military treatment facilities while undergoing medical care, including outpatient care, for an injury, illness, or disease incurred while serving in support of OIF/OEF, or other combat operation designated by the Secretary of Defense.

Family travel to visit wounded/injured members—Expands the authority for payment of travel and transportation allowances for family members to visit service members hospitalized in the United States to include members who are not considered seriously ill or injured, but who have incurred injuries in a combat operation or combat zone designated by the Secretary of Defense.

Retirees:

Concurrent receipt—Reduces from 10 years to just over 4 years the phased implementation of full concurrent receipt of veterans disability compensation and military retired pay for military retirees receiving veterans disability compensation at the rate payable for 100 percent disability by reason of a determination of individual unemployability.

Would authorize such retirees to receive full concurrent receipt of veterans disability compensation and military retired pay on October 1, 2009.

Reserve Health Care:

Provides eligibility for TRICARE to all reservists and their families who continue service in the Selected Reserve. Estimated cost: 5-yr: $880M; 10-yr: $2.3B (Compared to Taylor-Graham proposal: 5-yr: $3.8B; 10-yr: $12B). Three eligibility categories:

Involuntarily mobilized reservists (as in current law): 1 year TRICARE eligibility for every 90 days of mobilized service. DOD cost share: 72 percent.

Persons without employer provided health care, unemployed, self-employed. DOD cost share: 50 percent.

Any person not meeting the above criteria. DOD cost share: 15 percent.

Uniform Code of Military Justice:

Strengthens the Uniform Code of Military Justice by revising the offenses relating to rape, sexual assault, and other sexual misconduct and setting interim maximum punishments for the respective offenses.

Also establishes and defines stalking as a separate offense under UCMJ.

Mr. WARNER. I thank our respective leaders, the majority leader and the distinguished Senator from Nevada, and my good friend and partner, our dear Senator LEVIN, and all members of the Armed Services Committee, and particularly our staff that made this bill possible. It has had a long journey. But we are here.

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006—CONFERENCE REPORT

The PRESIDING OFFICER. The clerk will report the conference report.

The assistant legislative clerk read as follows.

A conference report to accompany H.R. 1815 to authorize appropriations for the fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

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

(The conference report is printed in the House proceedings of the RECORD of December 18, 2005.)

Mr. WARNER. Mr. President, will the Chair advise the Senate with regard to any time allocation for remarks in connection with the pending matter?

The PRESIDING OFFICER. There was not a time allocation.

Mr. LEVIN. Mr. President, I congratulate Senator WARNER. Without his leadership we would not be here. We had a record number of amendments which we had to deal with in a record short period of time. He showed incredible tenacity and patience and wisdom, as he always does in bipartisanship. I commend him and particularly our staffs.

Mr. President, I thank our leadership as well for their staying with us on this one. There was a time earlier this year when we didn't think we were going to get an authorization bill, and except for the efforts of our leaders we would not be here either. I want to particularly thank them.

Mr. LEVIN. Mr. President, I am pleased to join my good friend and colleague, Senator WARNER, the Chairman of the Senate Armed Services Committee, in urging the adoption of the conference report on H.R. 1815, the National Defense Authorization Act for Fiscal Year 2006. Getting this conference report to the Senate required the labors of Hercules, the patience of Job and the magic of Merlin. We would not have been able to complete conference on this important bill—made so very urgent by the fact that we are nation at war—without the tireless efforts of Senator WARNER.

First, a word on the extraordinary events of the last few days.

On the Senate side, every one of our conferees—including all 11 Democrats on the Armed Services Committee—signed the conference report. Each of these Senators signed on the basis of the text of the conference report that was agreed to between the Senate and House conferees.

As is our usual practice, we delivered our Senate signature sheets to the House on Friday afternoon, with the understanding that the conference report would be filed first in the House and acted upon first by that body. The Senate stood ready to take up the conference report as soon as it came over from the House and to pass it after 1 hour of debate.

Unfortunately, the conference report was not filed on either Friday or Saturday, because the House Republican leadership was considering adding an extraneous bill to the conference report. This bill was not a part of our conference, is not in the jurisdiction of our committee, and was never considered by any of the conferees. The bill was not a part of the conference report that was agreed to by our conferees on either side of the aisle.

Senator WARNER and I strongly objected to a procedure so totally destructive of bedrock legislative process. When we learned that such an attempt might be made, we joined together and retrieved the Senate signature sheets from the House. Only after we were assured on Sunday afternoon that the conference report would be voted on in the House of Representatives as agreed, with no effort to insert additional material, did we return the Senate signature sheets to the House.

I will ask unanimous consent that a copy of the cover letter that we sent to the House be inserted in the RECORD. I would also make reference to Senator WARNER'S remarks in the RECORD on this subject last Friday, and my remarks last Saturday.

Even before the events of the last weekend, the Armed Services Committee faced obstacles and hurdles in completing this bill that we have never faced before. For example:

It took us over 2 months from the time we reported the bill to the Senate on May 15 to the time debate initially began on July 20.

Then, after only 5 days of debate, our bill was pulled down by the majority leader on July 26 when the Senate failed to invoke cloture on the bill. We had to wait over 3 months and negotiate a very complicated unanimous consent agreement which limited the number of amendments before we were able to resume debate on the bill on November 4.

We debated the bill for an additional 7 days and finally passed it by a unanimous 98 to 0 vote on November 15, but not before disposing of a total of 261 amendments—more amendments ever considered to any Defense authorization bill since Congress passed the first annual Defense authorization bill back in 1961.

As far as completing conference this session, there were a lot of people who doubted it could be done because of the sheer size and complexity of this legislation, leaving aside some of its very contentious issues. Over the past 10 years, we have averaged a total of 70 days in conference with the House on this massive bill. Last year alone, we were in conference with the House for a total of 85 days. We completed this conference in under 1 month—29 days, to be exact. We compromised on a lot of issues, but we didn't compromise the quality of this legislation just for the sake of getting it done quickly. In short, we did it right and we are very proud of that. This year, we have produced a true holiday gift for our troops and our Nation.

This conference report contains provisions that provide well-deserved support for our military personnel and their families. In particular, the conference report will:

Increase basic pay by 3.1 percent, a half percent higher than inflation;

Increase the death gratuity for all active duty deaths from $12,400 to $100,000, retroactive to the beginning of Operation Enduring Freedom;

Authorize a new special pay of $430 a month during hospitalization for service members while rehabilitating from an injury or disease incurred in a combat zone;

Authorize a new leave of up to 21 days when adopting a child;

Provide $30 million in impact aid to local school districts, including a new $10 million authorization for schools that have a large increase or decrease in students due to rebasing, activation of new military units, or base realignment and closure;

Increase funding for military childcare services by $50 million, and for family assistance services by $10 million; and

Create a mental health task force to help military members and families deal with an increasing number of mental health issues.

The bill also contains several provisions especially designed to benefit our

National Guard and Reserve personnel and their families:

Every member of the Selected Reserve will have access to government-subsidized health care under the military TRICARE Standard medical program for themselves and their families.

Tier 1 is the TRICARE Reserve Select program that we authorized last year. National Guard and Reserve personnel who are mobilized can use this benefit for a year for each period of mobilized service, as long as they remain in the Selected Reserve. The Government pays 72 percent of their health care premium—they pay only 28 percent.

Tier II includes members of the Selected Reserve who do not have access to health insurance through their civilian employment. The Government pays 50 percent of their premium; and

Tier III includes members of the Selected Reserve who have access to health insurance through their employer but choose TRICARE. The Government pays 15 percent of their premium, they pay the remaining 85 percent.

National Guard and Reserve members who suffer an income loss when mobilized will be paid an income replacement payment after 18 months of active duty, upon completion of 24 months of active duty in a 5-year period, or when mobilized within 180 days of an earlier mobilization.

Reservists who are ordered to active duty for more than 30 days will receive a full housing allowance rather than the current 140 days.

In the bill we authorize the following end strengths for our active-duty forces: Army—512,400, an increase of 10,000 soldiers from last year's authorized end strength; Navy—352,700, 13,200 less than last year, in accordance with the Department's request; Marine Corps—179,000, an increase of 1,000 Marines; and Air Force—357,400, 2,300 less than last year's authorization, again in accordance with the Department's request.

We are very concerned about the Army's ability to recruit enough enlistees to make the end strength that we authorized. This bill gives the Army new tools to help it meet its recruiting goals:

A new bonus of up to $1000 for soldiers who refer a successful recruit to the Army;

New authority to experiment with innovative recruiting incentives;

Authorization for matching contributions to the Thrift Savings Plan during a service member's initial enlistment; and

An increased maximum enlistment bonus of up to $40,000.

This bill does not include everything that I fought for. For example, I am very disappointed that we were not able to eliminate the requirement that survivor benefit plan annuity payments be reduced by the amount of dependency and idemnity compensation received from the Veterans' Administration. I am also disappointed that we were not able to immediately repeal the 10-year phase-in of the concurrent receipt of military retired pay and VA disability compensation for military retirees with less than a 100 percent disability who are considered ''totally disabled'' because their disability renders them unemployable.

Before I comment further on a number of other issues in the conference report relating to support for our men and women in uniform, weapons systems and nonproliferation programs, I want to comment on provisions relating to the treatment of detainees and the sense of the Congress on United States policy on Iraq.

I am pleased that the conference report contains the full text of the McCain amendment on torture, without change. This language firmly establishes in law that the United States will not subject any individual in our custody, regardless of nationality or physical location, to cruel, inhuman, or degrading treatment or punishment. The amendment provides a single standard—''cruel, inhuman, or degrading treatment or punishment''—without regard to what agency holds a detainee, what the nationality of the detainee is, or where the detainee is held. With the enactment of this amendment, the United States will put itself on record as rejecting any effort to claim that these words have one meaning as they apply to the Department of Defense and another meaning as they apply to the CIA; one meaning as they apply to Americans and another meaning as they apply to our enemies; or one meaning as they apply in the United States and another meaning as they apply elsewhere in the world.

The McCain amendment is not only an important statement of law, it is a reaffirmation of one of the core values of our system of government and a restatement of who we are as Americans. I would not have signed or supported any conference report that did not include these provisions.

Despite repeated efforts by administration officials and their allies in the House of Representatives to amend this language, the conference report does not allow the President to authorize actions that violate the standards in the McCain amendment, or to immunize individuals who engage in such actions from either criminal prosecution or civil suit. Despite repeated efforts by administration officials and their allies in the House, the conference report does not authorize the U.S. government to indemnify individuals who are found to be liable for violating the standards in the McCain amendment, and it does not make reckless or wanton behavior a prerequisite to such liability.

The conference report would add a new section establishing a defense in any legal action against a person who engages in specific operational detention and interrogation practices that were officially authorized at the time that they were conducted, if the defendant did not know that the practices were unlawful and a person of ordinary sense and understanding would not have known that they were unlawful. This is not a new defense: it is virtually identical to the defense already available under the Manual for Courts-Martial for military members who act in reliance upon lawful orders.

It has never been my understanding that the McCain amendment would, by itself, create a private right of action. I do not believe that the amendment was intended either to create such a private right of action, or to eliminate or undercut any private right of action—such as a claim under the alien tort satute—that is otherwise available to an alien detainee. Rather, the McCain amendment would establish a legal standard applicable to any criminal prosecution or a private right of action that is otherwise available under law. That would not be changed in any way by the affirmative defense added in the new section. Nor would the McCain amendment be undermined in any way by any of the other detainee provisions in the conference report.

I opposed the initial amendment addressing the legal rights of Department of Defense detainees at Guantanamo Bay, Cuba when Senator GRAHAM offered it on the Senate floor, because it would have stripped federal courts of jurisdiction to hear habeas corpus challenges—including pending cases—brought by Guantanamo detainees. Unfortunately, the Senate approved that amendment by a 49-to-42 vote.

Following the Senate vote, I worked with Senator GRAHAM to build back protection into his amendment. We did so in three ways:

First, the jurisdiction-stripping provision in the initial Graham amendment would have applied retroactively to all pending cases in Federal court—stripping the Federal courts of jurisdiction to consider pending cases, including the Hamdan case now pending in the Supreme Court. The revised amendment adopted by the Senate—the so-called Graham-Levin-Kyl amendment—does not apply to or alter any habeas case pending in the courts at the time of enactment.

Under the Supreme Court's ruling in *Lindh* v. *Murphy*, 521 U.S. 320, the fact that Congress has chosen not to apply the habeas-stripping provision to pending cases means that the courts retain jurisdiction to consider these appeals. Again, the Senate voted affirmatively to remove language from the original Graham amendment that would have applied this provision to pending cases. The conference report retains the same effective date as the Senate bill, thereby adopting the Senate position that this provision will not strip the courts of jurisdiction in pending cases.

Let me be specific.

The original Graham amendment approved by the Senate contained language stating that the habeas-stripping provision ''shall apply to any application or other action that is pending on

or after the date of the enactment of this Act.'' We objected to this language and it was not included in the Senate passed bill.

An early draft of the Graham-Levin-Kyl amendment contained language stating that the habeas-stripping provision ''shall apply to any application or other action that is pending on or after the date of the enactment of this Act, except that the Supreme Court of the United States shall have jurisdiction to determine the lawfulness of the removal, pursuant to such amendment, of its jurisdiction to hear any case in which certiorari has been granted as of such date.'' We objected to this language and it was not included in the Senate-passed bill.

A House proposal during the conference contained language stating that the habeas-stripping provision ''shall apply to any application or other action that is pending on or after the date of enactment of this Act.'' We objected to this language and it was not included in the conference report.

Rather, the conference report states that the provision ''shall take effect on the date of the enactment of this Act.'' These words have their ordinary meaning—that the provision is prospective in its application, and does not apply to pending cases. By taking this position, we preserve comity between the judicial and legislative branches and avoid repeating the unfortunate precedent in Ex parte McCardle, in which Congress intervened to strip the Supreme Court of jurisdiction over a case which was pending before that Court.

Second, the initial Graham amendment would have provided for direct judicial review only of status determinations by Combat Status Review Tribunals, CSRTs. By contrast, the revised Graham-Levin-Kyl amendment adopted by the Senate provided for direct judicial review of both status determinations by CSRTs and convictions by military commissions. The amendment does not affirmatively authorize either CSRTs or military commissions—instead, it establishes a judicial procedure for determining the constitutionality of such processes.

Again, this improvement is preserved in the conference report, which retains the Senate language authorizing direct review of both status determinations by CSRTs and convictions by military commissions.

Third, the initial Graham amendment would have provided only for review of whether a tribunal complied with the Department's own standards and procedures. By contrast, the revised amendment adopted by the Senate would authorize courts to determine whether the standards and procedures used by CSRTs and military commissions are consistent with the Constitution and laws of the United States.

This language has been revised in conference only to state what the intent of the amendment already was—that it was not intended to grant to an alien detainee any rights under the Constitution and laws of the United States that the detainee does not already have. Otherwise, the improved language remains intact in the conference report: The courts would be expressly authorized to determine whether the standards and procedures used in a status determination or the trial of an alien detainee at the Guantanamo are consistent with the Constitution and laws of the United States, as they apply to that detainee.

We expect that final decisions in both the CSRT process and under the military order for trials will be reached in an expeditious manner to ensure judicial review within a reasonable period of time. The statement of managers makes this point expressly with regard to CSRT determinations, because the amendment requires that CSRT procedures be submitted to Congress. The statement of managers does not make this point with regard to military commissions only because the procedures for military commissions are not in any way addressed in the conference report.

The Senate bill also contained a provision that would require the Secretary of Defense to submit to Congress a report on the procedures used by combat status review tribunals and administrative review boards for determining the status of the detainees held at Guantanamo Bay and the need to continue to hold such detainees. This provision has been expanded in the conference report to require that the report also address procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense.

Nothing in the conference report is intended to in any way authorize, endorse or approve either these procedures or Military Commission Order No. 1, which establishes Department of Defense procedures for the trial of detainees. Nor does anything in the conference report authorize, endorse or approve the administration's position on the President's authority to treat any alien or category of aliens as ''enemy combatants'' or ''unlawful combatants''. All that it does is to require that certain DOD procedures be submitted to the Congress and establishes an orderly process for the review of those procedures in the courts to determine whether they are consistent with the Constitution and laws of the United States. The conference report does not attempt to prejudge the outcome of that review.

Throughout the conference, we were pressed by administration officials and their allies in the House to make changes to the Senate language. We were asked to strip the courts of jurisdiction over pending cases; to eliminate any review of the constitutionality of procedures established by the Department of Defense; to expand the habeas limitations to detainees held anywhere in the world; to expand these provisions to strip legal rights from detainees held by the CIA and other agencies; to bar detainees from ever bringing any legal action challenging any aspect of their detention; to prohibit the courts from providing legal relief for detainees who are found to be improperly held; and to grant immunity to individuals engaged in detention and interrogation operations. We successfully opposed all of these changes.

The conference report does make two changes to the Senate language which are more complex.

First, the Senate-passed provision would have established an exclusionary rule prohibiting CSRTs from considering evidence obtained through ''undue coercion''. I was troubled by the phrase ''undue coercion'', because of the implication that there might be such a thing as ''due''—or appropriate—coercion. I do not believe that coerced testimony is ever appropriate.

We were able to modify the provision in the conference report to eliminate the word ''undue'', an improvement over the Senate language. At the same time, however, the provision was modified so that it only provides for an ''assessment'' of whether the testimony was obtained through cruel, inhuman or degrading treatment and, if so, requires the tribunal to decide if there is any probative value to the testimony. We do not authorize such testimony to be used: a reviewing court will make that determination.

It is a centuries-old principle of Anglo-American law, enshrined in the fifth amendment to the Constitution, that no person shall be compelled to be a witness against himself. Regardless whether this rule of law is expressly incorporated into CSRT procedures, I hope and believe that the courts will enforce the generally accepted rule of law and ensure that evidence obtained through coercion is excluded from any administrative or judicial proceedings.

Second, while the Senate-passed provision would have eliminated federal court jurisdiction only for habeas corpus actions, the conference report would eliminate such jurisdiction for ''any other action against the United States or its agents'' relating to detention at Guantanamo Bay, Cuba. This new language is limited to detainees who either: (1) remain in military custody at Guantanamo; or (2) although they have been released from Guantanamo, have been determined by the United States Court of Appeals (subject to Supreme Court review) to have been properly detained as enemy combatants. This language places a limitation on legal recourse available to detainees. While we do not know whether any legal remedies other than habeas corpus actions would have been available to detainees, I would have preferred not to have this limitation in the bill.

In sum, administration officials and their allies in the House have sought at every turn to deny legal rights or recourse to detainees at Guantanamo and

elsewhere. I do not believe that we should have gone down the road of limiting legal remedies for detainees in the manner that we did. However, once the Senate voted over my objection to eliminate habeas corpus relief, my effort turned toward: (1) building back access to the courts on direct appeal of administrative determinations of status or criminal conduct; (2) avoiding stripping the courts of jurisdiction over pending cases; and (3) ensuring that the provisions on detainee rights would not be used to undermine the McCain amendment.

I believe that we succeeded on all three issues. The conference report preserves a meaningful opportunity for detainees to challenge the legality of their detention or any criminal conviction in federal court. It ensures that the provisions eliminating habeas corpus jurisdiction will be prospective in their application and will not apply to pending cases. And of course we worked with Senator MCCAIN to preserve his amendment intact and to shape the Graham-Levin language so as to avoid undermining the McCain amendment.

The conferees endorsed with minimal change the provision on United States policy on Iraq which garnered overwhelming bipartisan support from over three-quarters of the Senate. This provision shows that both houses of Congress, and both political parties, have come together with a common message to our troops, to the administration, to the American people, and, most importantly, to the Iraqi people.

Expressing the heartfelt gratitude of the American people to our troops and their families for their unwavering devotion to duty, service to the Nation, and selfless sacrifice, Congress in this conference report reiterates its support for them and for a successful conclusion to their mission.

Congress, in the provision in the conference report, notes that calendar year 2006 should be a period of significant transition to full Iraqi sovereignty, with Iraqi security forces taking the lead for the security of a free and sovereign Iraq, thereby creating the conditions for the phased redeployment of United States forces from Iraq.

Congress expresses its view that the administration should tell the leaders of all groups and political parties in Iraq that they need to make the compromises necessary to achieve the broad-based and sustainable political settlement that is essential for defeating the insurgency in Iraq, within the schedules they set for themselves.

Congress directs the administration to provide Congress and the American people specific information on its strategy in Iraq, principally the diplomatic, political, economic, and military measures that are being undertaken; whether the Iraqis have made the compromises necessary to achieve the broad-based and sustainable political settlement that is essential for defeating the insurgency; and the conditions that must be met in order to provide for the transition of additional security responsibility to Iraqi security forces, along with a plan for meeting such conditions, and an assessment of the extent to which such conditions have been met.

This provision, which has garnered broad bipartisan support, is a significant win for the American people, and a large step forward for policy for Iraq. The messages that it sends are important, and the information it demands is crucial, for establishing and advancing a strategy for completing the mission in Iraq successfully, for beginning the process of redeployment of our military forces, and for doing so in a manner that will hopefully enhance U.S. national security.

The conference report also authorizes $50 billion in supplemental funding for fiscal year 2006 to support our troops on the ground in Iraq and Afghanistan. This is consistent with the budget resolution. Included in this $50 billion is funding to support increased Army and Marine Corps personnel, funding to buy additional armor for their vehicles and to repair or replace the equipment that our troops rely on. It also includes $1 billion for our No. 1 force protection priority, the Joint Improvised Explosive Device or IED Task Force.

This bill authorizes military construction and family housing projects that will improve the quality of life of our men and women in uniform and their families. It also authorizes $1.5 billion to begin implementing the decisions of the 2005 base realignment and closure round. These funding authorizations are consistent with the military construction appropriations enacted in November and will allow those projects to proceed.

The conferees agreed to the Army's request to relax the punitive restrictions on military construction at Fort Buchanan, Puerto Rico that were enacted 5 years ago in light of the protests over Vieques. The Army activities at Fort Buchanan are not now and never were related to the Navy's activities at Vieques, and I am pleased that the conferees agreed to address these unjust restrictions.

With respect to nonproliferation programs, although I would have preferred the amendment that Senator LUGAR added to the Senate-passed bill, which would have repealed all of the various conditions that the Cooperative Threat Reduction, CTR, program must meet before spending money in any given year, I am pleased that we have included permanent authority to waive on an annual basis the requirement to certify that the various conditions have been met by each country recipient of CTR funds.

The CTR program and the nonproliferation programs at the Department of Energy are all funded at the budget request. Within the Department programs we were able to address some urgent requirements by providing additional funds to accelerate the shutdown of the last plutonium-producing reactor in Russia and to accelerate the security of nuclear weapons storage at key Russian sites.

The agreement includes $4.0 million in Air Force accounts that the Air Force and the Department of Defense have the option to use to study and improve the performance of conventional, nonnuclear, penetrator weapons. I hope and urge the Department to use at least the $4.0 million to support conventional, nonnuclear weapons development.

The conference report includes a series of provisions designed to improve the management of the Department of Defense. These include provisions that would:

Help protect the Federal employee workforce from unfair competition by codifying an important set of historic precedents and commonsense principles for public-private competition;

Improve the management of DOD's major defense acquisition programs by requiring the Department to establish more realistic and achievable cost and performance estimates and tighten oversight requirements for programs that are experiencing problematic cost growth;

Improve the management of $70 billion a year of DOD contracts for services by requiring the Department to establish a new management structure for such contracts and requiring strict review of interagency contracting mechanisms that have been abused in the past;

Reduce the risk of abusive acquisition practices like those seen in the proposed tanker lease contract by requiring the Secretary of Defense or the Deputy Secretary of Defense to personally approve any proposal to purchase a major weapon system as a commercial item; and

Prohibit the Department from wasting hundreds of millions of dollars on unneeded audits of financial management systems that must be replaced because they are incapable of producing timely, accurate and complete financial data for management purposes.

I am particularly pleased that the conference report also includes a provision for disaster relief for small business concerns damaged by drought. In the same way that floods, hailstorms, tornadoes, and other natural phenomena can devastate small businesses, the harm caused by unusually low water levels on the Great Lakes can be irreparable to businesses that depend on the waterways. The Small Business Act already provides disaster assistance to businesses have been victim to a number of natural disasters, so I am grateful that we have been able to broaden eligibility for that assistance to include businesses that have been hurt by below-average water levels on the Great Lakes.

With respect to the Navy's shipbuilding accounts, the conference agreement incorporates reasonable

cost caps on Virginia-class attack submarines in the Future Years Defense Program, the fifth DD(X) land attack destroyer, to be bought in 2010, and the fifth and sixth littoral combat ships, to be bought in 2008 or 2009. The conferees did not include a cost cap on the LHA because too little is known yet about the final design. The conference agreement also reflects the fact that the House has agreed to the Senate provision preventing the Navy from conducting a winner-take-all competition for the next generation destroyer program called the DD(X). Finally, the conferees agreed to a provision requiring the Navy to maintain 12 aircraft carriers and provided funding to overhaul the USS *John F. Kennedy* that the Navy had planned to retire.

The conferees dealt with the Navy's program to buy a new presidential helicopter, called the VXX, by adopting compromise language that would: (1) allow production of the pilot production helicopters to go forward; and (2) require that the Secretary of the Navy submit an acquisition strategy for the full rate production aircraft, Increment Two, by March 15, 2006. This strategy would be required to include one phase of operational testing before initiation of full rate production for VXX. The agreement would fence 25 percent of the Fiscal Year 2006 R&D funding until the Secretary submits that strategy.

The conferees also dealt with the Army's future combat systems by agreeing that the entire Army future combat systems program, including the manned ground vehicles project, should remain in system development and demonstration, rather than having large portions revert to the technical base. This is a recognition of the importance of the Army's only modernization program to both the future Army, and to the spinout of FCS technologies to the current force, as well as a recognition of the need for the future combat systems to be developed as an integrated system of systems as quickly as possible.

The bill also demonstrates the conferees continued strong support for the Department's special operations, counterdrug and humanitarian operations. In particular the conferees enhanced DOD's ability to combat terrorism and the production and trafficking of illegal drugs, including: authorizing and funding five additional National Guard Chemical, Biological, Radiological, Nuclear and High Yield Explosive (CBRNE) Enhanced Response Force Package teams, in addition to sustaining the existing 12 teams—which provide support to civilian authorities in the aftermath of a WMD incident; directing the Department to report on the use of DOD aerial reconnaissance assets to support the Department of Homeland Security; authorizing use of counterdrug funding for 2 years for joint task forces combating terrorism and narcotics production and trafficking, and; designating the Chairman of the Joint Chiefs of Staff as the principal military advisor to the Homeland Security Council. The conferees also agreed to authorize increased funding for humanitarian operations, including $40 million in a future supplemental for Pakistan, and expanding the medical assistance to include related education, training, and technical assistance.

In science and technology, this year's conference report includes a number of provisions and funding measures that support the transformation of our military while improving our ability to rapidly move new technologies out of the laboratory and onto the battlefield. The conference report authorizes over $11.3 billion for science and technology research programs, an increase of $840 million over the President's budget request. It also makes permanent the SMART, Science, Math, and Research for Transformation, Scholarship for Service Program to help the DoD educate, train, and employ the highest quality technical workforce. In order to better utilize the innovative talents of our nation's small businesses, the bill establishes a pilot program to promote the transition of technologies from the Small Business Innovative Research program into DoD acquisition programs. Finally, the conference report increases funding for and establishes mechanisms to accelerate and better coordinate research in a number of priority areas including robotics, unmanned ground vehicles, IED detection and defeat, the diagnosis and treatment of blast injuries, semiconductor microelectronics, and the development and deployment of advanced fuel cell vehicles.

I ask unanimous consent that the letter I referred to be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
*Washington, DC, December 18, 2005.*

Hon. DUNCAN HUNTER,
*Chairman, Armed Services Committee, and National Defense Authorization Act for Fiscal Year 2006 Conference, House of Representatives, Washington, DC.*

DEAR DUNCAN: On Friday, December 16, we joined you and Ike Skelton in conducting the final meeting of the conferees along with other Members of the Senate and House.

At the conclusion of the meeting, the ''base bill'' was agreed upon and signatures of Republican and Democratic Committee Members were requested and affixed to the Conference Report with the expectation that the House, following the customary procedure, would be the first chamber to file. It was our further understanding that this would be done Friday evening.

We are returning to you the signatures of the Senate conferees on the condition that there are no changes made in the ''base bill'' and Conference Report and that the House obtain a Rule which precludes any further amendment.

You have shown strong leadership during this very brief and unusual conference period and we have confidence that you can achieve passage in the House of the ''base bill''. We believe it is in the interest of the Nation and the men and women of the Armed Forces that our Conference Report as agreed to on December 16 becomes law.

Sincerely,

CARL LEVIN,
*Ranking Member.*
JOHN WARNER,
*Chairman.*

Mr. LEVIN. My particular thanks to my staff for their extraordinary work: Rick DeBobes, Peter Levine, Jon Clark, Chris Cowart, Dan Cox, Madelyn Creedon, Brie Eisen, Evelyn Farkas, Richard Fieldhouse, Creighton Greene, Bridget Higgins, Mike Kuiken, Gary Leeling, Mark McCord, Bill Monahan, Arun Seraphin.

Also to Charlie Abell and others of Senator WARNER'S staff.

COMMENTS ON FINAL PASSAGE

Mr. KYL. I would like to say a few words about the now-completed National Defense Authorization Act for fiscal year 2006, and in particular about section 1405 of that act, which expels lawsuits brought by enemy combatants from United States courts. I see that my colleague, the senior Senator from South Carolina, is also on the floor.

I would like to begin by commenting on the need for this legislation. This provision originally was added to the bill in an amendment that was offered by Senator GRAHAM and of which I was a cosponsor, as well as Senator CHAMBLISS.

Keeping war-on-terror detainees out of the court system is a prerequisite for conducting effective and productive interrogation, and interrogation has proved to be an important source of critical intelligence that has saved American lives.

In Rasul v. Bush, the U.S. Supreme Court interpreted section 2241 of title 28 to authorize enemy combatants held outside of the United States to file habeas-corpus petitions challenging their status in federal courts. Such a process is both without precedent and is utterly impractical.

Giving detainees access to federal judicial proceedings threatens to seriously undermine vital U.S. intelligence-gathering activities. Under the new Rasul-imposed system, shortly after al-Qaida and Taliban detainees arrive at Guantanamo Bay, they are informed that they have the right to challenge their detention in Federal court and the right to see a lawyer. Detainees overwhelmingly have exercised both rights. The lawyers inevitably tell detainees not to talk to interrogators. Also, mere notice of the availability of these proceedings gives detainees hope that they can win release through adversary litigation—rather than by cooperating with their captors. Effective interrogation requires the detainee to develop a relationship of trust and dependency with his interrogator. The system imposed last year as a result of Rasul—access to adversary litigation and a lawyer—completely undermines these preconditions for successful interrogation.

Navy VADM Lowell Jacoby expounded on the preconditions for effective interrogation in a declaration attached to the United States' brief in the Padilla litigation in the Southern District of New York. Vice Admiral Jacoby at the time was the Director of the Defense Intelligence Agency. He noted in the Declaration that:

DIA's approach to interrogation is largely dependent upon creating an atmosphere of dependency and trust between the subject and the interrogator. Developing the kind of relationship of trust and dependency necessary for effective interrogations is a process that can take a significant amount of time. There are numerous examples of situations where interrogators have been unable to obtain valuable intelligence from a subject until months, or, even years, after the interrogation process began.

Anything that threatens the perceived dependency and trust between the subject and interrogator directly threatens the value of interrogation as an intelligence gathering tool. Even seemingly minor interruptions can have profound psychological impacts on the delicate subject-interrogator relationship. Any insertion of counsel into the subject-interrogator relationship, for example—even if only for a limited duration or for a specific purpose—can undo months of work and may permanently shut down the interrogation process.

Specifically with regard to Jose Padilla, Vice Admiral Jacoby also noted in his Declaration that:

Providing [Padilla] access to counsel now would create expectations by Padilla that his ultimate release may be obtained through an adversarial civil litigation process. This would break—probably irreparably—the sense of dependency and trust that the interrogators are attempting to create.

The system of litigation that Rasul has wrought is unacceptable.

Mr. GRAHAM. I agree entirely. If I could add one thing on this point: perhaps the best evidence that the current Rasul system undermines effective interrogation is that even the detainees' lawyers are bragging about their lawsuits' having that effect. Michael Ratner, a lawyer who has filed lawsuits on behalf of numerous enemy combatants held at Guantanamo Bay, boasted in a recent magazine interview about how he has made it harder for the military to do its job. He particularly emphasized that the litigation interferes with interrogation of enemy combatants. Ratner stated:

The litigation is brutal for [the United States]. It's huge. We have over one hundred lawyers now from big and small firms working to represent these detainees. Every time an attorney goes down there, it makes it that much harder [for the U.S. military] to do what they're doing. You can't run an interrogation . . . with attorneys. What are they going to do now that we're getting court orders to get more lawyers down there?

When I read that quote, that for me was the last straw. I knew that something had to be done. On this issue, both the detainees' lawyers and the Defense Department seem to agree: involving enemy combatants in adversarial litigation in U.S. courts undermines effective interrogation of those detainees.

Mr. KYL. I am glad that we have been able to work together on this issue. I would add that interrogation of these detainees is important. In his Declaration to the Southern District of New York, DIA Director Jacoby described how interrogation has proven to be a critical intelligence tool—indeed, our most important intelligence tool—in past conflicts and in the current war on terror. Interrogation was our most valuable source of information in World War II and the gulf war, and has played a key role in stopping numerous terrorist attacks in the present conflict. Vice Admiral Jacoby stated in that declaration:

Interrogations are vital in all combat operations, regardless of the intensity of the conflict. Interrogation permits the collection of information from sources with direct knowledge of, among other things, plans, locations, and persons seeking to do harm to the United States and its citizens. When done effectively, interrogation provides information that likely could not be gained from any other source.

The Department of the Army's Field Manual governing Intelligence Interrogation, FM 34–52, dated 28 September 1992, provides several examples of the importance of interrogations in gathering intelligence. The Manual cites, for example, the United States General Board on Intelligence survey of nearly 80 intelligence units after World War II. Based upon those surveys, the Board estimated that 43 percent of all intelligence produced in the European theater of operations was from HUMINT, and 84 percent of the HUMINT was from interrogation. The majority of those surveyed agreed that interrogation was the most valuable of all collection operations.

The Army Field Manual also notes that during OPERATION DESERT STORM, DoD interrogators collected information that, among other things, helped to: develop a plan to breach Iraqi defensive belts; confirm Iraqi supply-line interdiction by coalition air strikes; identify diminishing Iraqi troop morale; and identify a United States Prisoner of War captured during the battle of Kafji.

Vice Admiral Jacoby also noted that interrogations of enemy combatants captured in the War on Terror have played a vital role in preventing numerous terrorist attacks. Again, quoting from his declaration in the Padilla litigation, Jacoby noted that interrogations of combatants such as those held at Guantanamo Bay have:

. . . provided vital information to the President, military commanders, and others involved in the war on Terrorism. It is estimated that more than 100 additional attacks on the United States and its interests have been thwarted since 11 September 2001 by the effective intelligence gathering efforts of the Intelligence Community and others.

In fact, Padilla's capture and detention were the direct result of such effective intelligence gathering efforts. The information leading to Padilla's capture came from a variety of sources over time, including the interrogation of other detainees. Knowledge and disruption of Al Qaida's plot to detonate a 'dirty bomb' or arrange for other attacks within the United States may not have occurred absent the interrogation techniques described above.

There are other examples of the importance of intelligence obtained from interrogation. In a recent new release, the Defense Department described valuable information that was obtained from interrogation of Mohamed al Kahtani, an enemy combatant being held at Guantanamo Bay. The Pentagon release noted that interrogation of Kahtani has yielded information that:

Clarified Jose Padilla's and Richard Reid's relationship with al-Qaida and their activities in Afghanistan; provided infiltration routes and methods used by al-Qaida to cross borders undetected; explained how Osama Bin Laden evaded capture by U.S. forces, as well as provided important information on his health; and provided detailed information about 30 of Osama Bin Laden's bodyguards who are also held at Guantanamo.

The Pentagon's news release concluded: ''the result of those interrogations [at Guantanamo Bay] has undoubtedly produced information that has saved the lives of U.S. and coalition forces in the field.''

Let me cite another example: a June 27, 2004 Washington Post story notes that on November 11, 2001, Pakistani forces captured Ibn al-Shaykh al-Libi, a Libyan national who ran the Khaldan paramilitary camp in Afghanistan. In January 2002, al-Libi was handed over to U.S. forces and interrogated. According the Post, interrogation of al-Libi:

. . . provided the CIA with intelligence about an alleged plot to blow up the U.S. Embassy in Yemen with a truck bomb and pointed officials in the direction of Abu Zubaida, a top al Qaeda leader know to have been involved in the September 11 plot. In March 2002, Abu Zubaida was captured. . . . [Interrogation of Zubaida] led to the apprehension of other al Qaeda members, including Ramzi Binalshibh, also in Pakistan. The capture of Binalshibh and other al Qaeda leaders—Omar al-Faruq in Indonesia, Rahim al-Nashiri in Kuwait, and Muhammad al Darbi in Yemen—were all partly the result of information gained during interrogations, according to U.S. intelligence and national security officials.

The bottom line is that keeping detainees out of court makes effective interrogation possible, and interrogation has proved to be an invaluable source of intelligence, allowing the United States to capture important terrorists, prevent future terrorist attacks, and save the lives of American soldiers in the field.

I should also say a few words about some of the attacks that have been made against our amendment. For example, some critics have suggested that our amendment is inconsistent with the McCain amendment—that it prevents detainees from suing to enforce the McCain amendment. The response to this criticism is relatively straightforward: our amendment does not take anything away because the McCain amendment does not create a private cause of action in the first place. That amendment directly regulates military officers and is enforced through the usual mechanisms of military discipline.

Mr. GRAHAM. You are absolutely correct Senator KYL. I must admit, I'm

a bit baffled by the assertion that our amendment is somehow internally inconsistent, that our provisions interfere with the McCain provisions in some way.

While we must ensure that detainees are treated humanely, and that is what we addressed so well with the McCain portion of our total package, directing our departments and agencies to refrain from cruel, inhumane, or degrading treatment; we also don't want to give these detainees the right to abuse our courts by going after our soldiers, sailors, airmen and marines based on how we have decided to treat them. In fact, while it is true that some physical abuses have occurred, we know that members of al-Qaida are trained to claim mistreatment to manipulate public opinion of the war.

I would like to remind all of my colleagues of some of the most egregious cases that prompted our amendments. For instance, a detainee who threw a grenade that killed an Army medic, a medic—someone trying to render medical assistance, and who often treats our enemies on the battlefield as well as our own troops.

In any event, the detainee who threw the grenade that killed an Army medic in a firefight, and who comes from a family with longstanding al-Qaida ties, filed for an injunction forbidding anyone from interrogating him or engaging in ''cruel, inhuman, or degrading'' treatment of him.

Now clearly, our reaffirmation of America's policy against treating anyone in a cruel, inhuman, or degrading way tells the world that we are not like our enemy. We do not allow our departments or agencies to treat people like that. And if our people do abuse people, we prosecute them to the fullest extent of the law.

However, to allow a detainee access to our courts to contest every aspect of his detention, a person who has fought against the very system he now seeks to make use of, is ludicrous. And for anyone to say that somehow our provisions undermine the McCain provisions or our overall amendment is just as wrong.

Senator MCCAIN, due to his service in our Nation's military, is uniquely qualified to take the lead on these issues. The McCain provisions are about us. How we behave. How we administer justice. It is another affirmative statement that the United States of America is that ''Shining City on the Hill'' President Reagan referred to. I am very proud to have been part of Senator MCCAIN's effort to retake the moral high ground in the war on terror.

The Graham-Kyl provisions are about them, the detainees, and what rights they do and, most importantly, do not have. And I am proud of the provisions we have made for the detainee's status to be reviewed by the Federal courts on the one time direct appeal. We allow for a just process, in the form of military tribunals and boards and commissions, a process based on Supreme Court precedent, modeled on the tribunals we have used in the past and created in accordance with Geneva Convention requirements. That is the process we have established for determining the status of detainees.

But I have gotten a little far a field here, let's get back to the lawsuits. Here is another of the crazy lawsuits out there: there's a suit out there by a detainee accusing military health professionals of ''gross and intentional medical malpractice'' in alleged violation of the 4th, 5th, 8th, and 14th Amendments, 42 U.S.C. 1981, and other, unspecified, international agreements. Now I don't know about the rest of you, but a detainee has no business in our courts suing the individual doctors and nurses that are making sure that that detainee is in good health.

Here is another one. There is one guy down there that we are trying to send home, and he's suing to keep us from sending him home. Imagine that, he is trying to stay.

One high level al-Qaida detainee lawsuit complains about the base security procedures, the speed of the mail, and his medical treatment. He is asking the courts to order the marines to transfer him into the ''least onerous conditions'' at Guantanamo and allow him to keep any books and reading material sent to him.

I think this one is the one that makes me the maddest. A high level al-Qaida member, who probably has the blood of 9/11 on his hands, complaining about the speed of his mail delivery. Complaining about how onerous the conditions are at Guantanamo.

With the McCain provisions of our amendment, we have, in addition to the President's order and other regulations already in place, directed the Department of Defense to treat him humanely. But under our provisions, he will receive the justice he deserves.

As you can see, these cases have nothing to do with cruel or inhumane treatment. They are abuses of our courts by the very people who are trying to kill Americans here and abroad. I don't know about you, Senator KYL, but I believe that when you raise arms against the United States, you should not be surprised when you lose the privilege of our court system. As the McCain amendment provisions state very clearly, we are not going to treat people inappropriately. And, Senator KYL, as our provisions state very clearly, we are not going to allow them to make a mockery of our courts, standing beside our own citizens at the courthouse door.

We have provided a fair alternative judicial process for the detainees with our provisions. In fact, we have been more than fair. We have given them more process than our own soldiers and marines would enjoy under the Geneva Convention. This in no way undermines the McCain provisions about how we will treat them and I would challenge anyone who thinks so to come to the Senate floor and debate us on that point.

Mr. KYL. To be clear, neither the CSRT nor the ARB process is designed to entertain grievance about the conditions of confinement. Is that your understanding as well?

Mr. GRAHAM. And those are the only channels that have been created where the detainee himself can pursue a remedy on his own in a semi-adversarial forum. These complaints about conditions of confinement, these are for the military itself to enforce through its own procedures and systems of accountability for monitoring its soldiers. And we have no reason to believe that those systems are not adequate to investigate and remedy abuses. For all the attention to cases such as Abu Ghraib, one thing that deserves emphasis is that it was our own military that discovered, investigated, and punished those abuses. That is as it should be. These standards of treatment are important, but they need to be enforced through the military's internal systems of accountability and Congressional oversight, not through lawsuits and adversarial proceedings brought by detainees. The military's own accountability systems ultimately, I think, will be more effective in monitoring our detention centers and in remedying abuses. All that litigation would do—letting these detainees into court—is undermine intelligence gathering through interrogation.

Mr. BROWNBACK. If I might interrupt, I would like to add that I share the understanding of my colleagues from Arizona and South Carolina. I supported the McCain amendments—I think that it is important to ensure that detainees are treated humanely. But I would not support allowing those detainees to file lawsuits against our armed forces, and I wasn't aware that anyone had even suggested that the McCain amendments allow detainees to file Bivens-type actions.

Mr. KYL. No one really argued that the McCain amendments do create a private cause of action, except that some groups have suggested that the Graham/Kyl amendment is somehow inconsistent with the McCain amendments, the implication being that the Graham amendment wiped out the forum for bringing some cause of action that otherwise was created. Obviously, if the McCain amendment did create a private right of action, our amendment would bar the courts from entertaining that action. But the fact alone that the same Congress that adopted the McCain amendment also adopted the Graham/Kyl amendment tends to confirm, I would think, that the McCain amendments never were intended to create a private right of action in the first place.

As a matter of fact, the Supreme Court recently has tightened the standards for spontaneously recognizing such actions in cases where Congress is silent on the matter—I believe it was in the recent case of Alexander against Sandoval. The McCain amendments do

not state that they create a private cause of action. They regulate the conduct our troops rather than creating rights. And we have alternative means of their enforcement—as my colleague mentioned, through the system of military discipline—and thus we do not need a private cause of action to be implemented. I would be pretty surprised if, under those circumstances, anyone were to argue that the McCain amendment created a private right of action. So the senior Senator from South Carolina is correct, the Graham-Levin-Kyl amendment does not take away any cause of action created elsewhere in this bill, because the bill does not create any rights of action. Some members have been arguing that the McCain amendment will establish a standard that perhaps could be employed in another cause of action. That is, of course, true. But if such a cause of action is to exist, Congress will have to create it in the future. No cause of action currently available could serve as a vehicle for enforcing the McCain amendment in a private lawsuit, and I think that all the backers of that amendment consistently agree that the McCain amendments themselves did not create a private right of action. Again, it would be strange to construe this Act as intending such a private action when by the same hand this Congress would take away any forum for asserting such action.

Mr. GRAHAM. I thank the Senator from Arizona for his comments. I'd also like to say a word about the timing of this bill because we drafted this section very carefully and I want our colleagues to know exactly what they will be agreeing to. While our language does respond to the Rasul decision by effectively reversing the Supreme Court's decision in that case, we wanted to respect the courts' role in this by addressing two different considerations.

First, as we stated before, we wanted the CSRT process to yield decisions which will be reviewed by the DC Circuit Court of Appeals. And we wanted to be sensitive to the Rasul court's concerns about a process for the detainees. So, what we did was make the substantive provisions governing the CSRTs and ARBs apply to all cases, those pending on or after the enactment date. This was to ensure that every detainee was provided with the same protections and review.

Second, regarding the modification of the jurisdiction of those courts currently hearing individual habeas or other actions that have been filed by the detainees, we wanted those cases to be recast as appeals of their CSRT determinations. We believe that is the best way to balance between allowing the detainees to challenge their status, and still allowing effective detention and interrogation techniques. As we all know, a court either has jurisdiction to hear a case or it doesn't. Jurisdiction doesn't attach for all time when the case is filed.

This is really no different than transferring a case from one court to another. But in this case, given the change in the substantive law as well, we were required to extinguish these habeas and other actions in order to effect a transfer of jurisdiction over these cases to the DC Circuit Court and substantive legal change as well.

Mr. KYL. Right. It may not be quite right to characterize this bill's provisions as transferring jurisdiction. Rather, they extinguish one type of action—all of the actions now in the courts—and create in their place a very limited judicial review of certain military administrative decisions.

Mr. GRAHAM. Yes, that is correct. But we do still allow some types of judicial review to go forward—those cases asking for review, in accordance with section 1405, of military commissions or CSRTs. And the very last paragraph of section 1405—I believe that it is paragraph (h)(2)—adopts a compromise of sorts. It states that the bill's authorization for limited DC Circuit review of CSRTs and military commissions shall apply to pending cases. Obviously, no pending case seeks judicial review in the DC Circuit pursuant to section 1405. What this paragraph means is that, at the same time that the courts like the DC district courts kick these cases out of their courtrooms, they can also tell them where they should go next. And if, for example, a habeas action currently is in the DC Circuit, that court can simply construe that action as a request for review of the detainee's CSRT pursuant to subsection (e) of 1405, and allow that claim to go forward in that form.

Mr. KYL. The DC Circuit will have to give the petitioner leave to amend his claim, I assume?

Mr. GRAHAM. Yes, I assume that they will do so. No sense in kicking out a detainee's current habeas action in the DC Circuit just so that he has to refile a section 1405 review request—it would be better to let the current case go forward as a 1405 review request, as appropriately amended.

Mr. KYL. We agree on that point. The one thing that critics have said about this bill that is correct is that it is a jurisdiction stripping bill. It strips every court of jurisdiction to hear claims from detainees held in Guantanamo Bay. The courts' rule of construction for these types of statutes is that legislation ousting the courts of jurisdiction is applied to pending cases. It has to. We're not just changing the law governing the action. We are eliminating the forum in which that action can be heard. And there is no exception anywhere in this bill for keeping intact part of that forum to hear the case. The case simply has nowhere to be heard.

I have just been handed a memorandum on this subject. The governing cases on this question are the Landraf case, as well as *Hallowell* v. *Commons*, 239 U.S. at 506, and *Sherman* v. *Grinnell*, 123 U.S. at 679. As the Landraf court noted, these statutes ''speak to the power of the court rather than the rights or obligations of the parties.'' These cases articulate the rule that will govern the detainee habeas actions and other lawsuits that currently are in the courts: legislation removing jurisdiction applies to pending cases and removes those cases from the courts.

Mr. GRAHAM. Mr. President, if Senator KYL would be so kind, could he explain how our amendment will affect ongoing litigation? Specifically, my understanding is that the Supreme Court granted certiorari recently in a case.

Mr. KYL. Yes. The Constitution gives Congress the power to make ''exceptions'' and ''regulations'' to the Supreme Court's jurisdiction—or at least, to its appellate jurisdiction. It was Marbury v. Madison that held that Congress could not regulate original jurisdiction, but the court since then has made clear that even habeas actions filed directly in the Supreme Court are regarded as falling within a subspecies of the Supreme Court's appellate jurisdiction. This would be an interesting exam question for a law school class.

The Congress's authority to use this power was affirmed by the Supreme Court in the case of Ex Parte McCardle. That case involved, I believe, an even sharper use of this authority than this bill does—I believe that there the Supreme Court had even heard argument in that case before Congress stripped the court's jurisdiction over it. The Supreme Court upheld the statute and dismissed Colonel McCardle's case for want of jurisdiction.

Mr. GRAHAM. And we are confident that McCardle still is good law?

Mr. KYL. So long as the Constitution still is good law. I am not aware that the clause in Article III allowing Congress to make exceptions and regulations to Supreme Court appellate jurisdiction has been repealed.

I suppose that some might argue that stripping the Supreme Court of jurisdiction over a pending case is unconstitutional if it is driven by some impure motive. But I can't imagine that the court would take away an authority clearly granted to Congress by the Constitution, regardless of what motive one might attribute to us. I am a member of this body, and would have great difficulty describing some definitive motive or intent to every law that we enact. I don't know how the Supreme Court or any other court could accurately discern such a motive. The laws that we enact have meanings that can be discerned through ordinary rules of construction. I think the rule of law is much more secure when the meaning of legislation is governed by those universally accessible rules of construction rather than through some attempt to psychoanalyze Congress's motive. And in any event, as I recall, this amendment was filed before the Supreme Court even granted review in the Hamdan case. That makes it a little

hard to argue that the amendment was motivated by a desire to strip the court of its jurisdiction in that case. I don't think that the Constitution gives Hamdan a greater right to have his case go forward than it did to Colonel McCardle.

Mr. GRAHAM. So once this bill is signed into law, you anticipate that the Supreme Court will determine whether to maintain their grant of certiorari?

Mr. KYL. Yes, in my opinion, the court should dismiss Hamdan for want of jurisdiction. That is what they did in Ex Parte McCardle. I assume that we may see an unhappy dissent from the court's order from one or two of the Justices—there may be some members of the court who refuse to accept McCardle and article III. But I think that a majority of the court would do the right thing—to send Hamdan back to the military commission, and then allow him to appeal pursuant to section 1405 of this bill.

The court also may well request a round of briefing on the effect of the effect on the Hamdan case. I suppose that a lawyer in the SG's office can look forward to rereading Ex Parte McCardle and the debates on the case in Hart & Wechsler's. But again, I don't think that this will change the result.

As for legislative history, I think it usually is regarded as an element of the canons of construction. It gives some indication of what Congress at least understood what it was doing—the context in which a law was enacted. Although, I understand that Justice Scalia does not read legislative history. I suppose that for his sake, we will have to strive to be exceptionally clear in the laws that we write.

Mr. GRAHAM. Let me address another issue. As we worked through this language in conference, we received a lot of comments from our colleagues who were concerned not only about the frivolous cases being filed by al-Qaida terrorists at Guantanamo, but by people detained by our forces in Iraq.

I believe there are several cases that have been filed by those held in Iraq challenging their detention by American forces. Our language does not address these cases, and let me tell you why.

The Rasul v. Bush decision that we have talked so much about worked two significant changes in prior POW or detainee law. Prior to Rasul, the Eisentrager line of cases had governed whether foreign combatants had access to our courts. In 1950, the Eisentrager court held that a Federal district court lacked authority to hear habeas cases for some German POWs held by U.S. forces outside the U.S. These Germans had been tried and convicted of war crimes by an American military commission headquartered in Nanking, and then put in jail in Germany.

The Court stated six reasons for its decision. The German prisoners were: (1) Enemy aliens who (2) had never been or resided in the United States, (3) were captured outside U.S. territory and there held in military custody, (4) were there tried and convicted by the military (5) for offenses committed there, and (6) were imprisoned there at all times.

The Eisentrager line of cases is the reason the Bush administration chose to locate the al Qaida and Taliban holding facility at Guantanamo. The Bush administration relied upon the Eisentrager line of cases so as to prevent exactly what we have seen happen since Rasul: terrorists with lawyers. Now I'm a lawyer myself, and I think we can all agree that that is a bad combination.

In fact, if my colleagues will permit me a quick aside, I would remind them again of the statement by one of the lawyers for some of these terrorists, Michael Ratner. Mr. Ratner boasts about the fact that this litigation has undermined intelligence gathering in the war on terror. In an interview published in May of this year Mr. Ratner stated:

> The litigation is brutal for the United States. It's huge. We have over one hundred lawyer now from big and small firms working to represent these detainees. Every time an attorney goes down there, it makes it that much harder for the U.S. military to do what they're doing. You can't run an interrogation with attorneys. What are they going to do now that we're getting court orders to get more lawyers down there?

Now that is what we are facing. Terrorists with lawyers. I am pretty sure the American people expect more from their government than that.

But getting back to what I was saying about Eisentrager. The Bush administration relied on the Supreme Court's decision in Eisentrager when they located the detainees at Guantanamo, reasoning sensibly, at least I think it was sensibly, that since the al-Qaida and Taliban members were enemy aliens who were being held by U.S. forces outside the United States after being captured on the battlefield, that they would not have access to Federal courts.

But then the Supreme Court held in Rasul that the detainees could have access to our courts to challenge their detention. Would my colleague from Arizona care to comment on the Rasul decision?

Mr. KYL. Where to even begin? The U.S. has been accused before in its history of imperialistic behavior, but I think that this is the first time ever that a portion of a sovereign nation has been annexed to the United States by the U.S. Supreme Court.

Rasul begins with a discussion of two cases that were irrelevant to the question before the court, Ahrens v. Clark and the Braden case. Ahrens had adopted a strict rule that district courts may only hear cases within their territorial jurisdiction. Braden then softened that rule for particular circumstances—for cases where a defendant is in prison in one state but under indictment in another, allowing the defendant to bring a habeas action to challenge the indictment in the latter state's courts. Neither of these cases has anything to do with enemy combatants.

From a discussion of these relatively mundane decisions, the Rasul majority adopts a rather stunning non-sequitir: that ''because Braden overruled the statutory predicate to Eisentrager's holding, Eisentrager plainly does not preclude the exercise of section 2241 jurisdiction over petitioners' claims.''

It could almost be a rule of construction that when a lawyer says ''plainly'' or ''clearly,'' he usually is identifying the weakest point in his argument. Braden is a case concerned more with the technical aspects of judicial administration than with core questions of the scope of the writ. Eisentrager is different. The Nazi soldiers denied access to the writ in that case did not simply file in the wrong forum—Alabama instead of Kentucky—or at the wrong phase of their sentences. Eisentrager denied review to the Nazi soldiers because they were Nazi soldiers in the custody of the U.S. military in occupied Germany. It is not a case about how we administer the writ of habeas corpus, but about the power and nature of the writ and who may employ it. I doubt that there was any member of the court who participated in Braden who believed that the court in that case was destroying the foundation of Eisentrager.

So according to section III of Rasul, Braden killed the ''statutory predicate'' for Eisentrager and that's that. No more territorial jurisdiction requirement for habeas courts. Apparently even the Rasul court itself was unwilling to buy this argument, however, because section IV of the opinion goes on to explain that Guantanamo Bay, Cuba is really part of the territory of the United States—something which section III just told us irrelevant and unnecessary to the court's decision.

But territorial jurisdiction does matter—a point that the court seems to concede by attempting to annex Guantanamo Bay to the United States. But Cuba is not the United States. Eisentrager should be restored to its rightful place as the precedent that governs litigation attempted by enemy combatants outside of our territory—even for the special case of Guantanamo Bay. Eisentrager was the law of the land for over 50 years, until Rasul carved a hole into it. Through this act, Congress patches that hole and restores Eisentrager's role as the governing standard. We do this not because, or not just because, Rasul doesn't make sense and is wrong. We do it because Eisentrager's reasoning is compelling, and the rule that is established wards off much mischief.

Let me quote two key passages from Eisentrager that explain why enemy combatants outside the United States should not have access to U.S. courts. As that court began by noting, there has been:

. . . no instance where a court, in this or any other country where the writ is known, has issued it on behalf of an alien enemy who, at no relevant time and in no stage of his captivity, has been within its territorial jurisdiction. Nothing in the text of the Constitution extends such a right, nor does anything in our statutes.

Not only has this always been the law, but it should remain so. Eisentrager explains rather clearly and eloquently why we do not let enemy combatants sue our soldiers in our courts:

A basic consideration in habeas corpus practice is that the prisoner will be produced before the court. This is the crux of the statutory scheme established by the Congress; indeed, it is inherent in the very term ''habeas corpus.'' And though production of the prisoner may be dispensed with where it appears on the face of the application that no cause for granting the writ exists, Walker v. Johnston, we have consistently adhered to and recognized the general rule. Ahrens v. Clark. To grant the writ to these prisoners might mean that our army must transport them across the seas for hearing. This would require allocation of shipping space, guarding personnel, billeting and rations. It might also require transportation for whatever witnesses the prisoners desired to call as well as transportation for those necessary to defend legality of the sentence. The writ, since it is held to be a matter of right, would be equally available to enemies during active hostilities as in the present twilight between war and peace. Such trials would hamper the war effort and bring aid and comfort to the enemy. They would diminish the prestige of our commanders, not only with enemies but with wavering neutrals. It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home. Nor is it unlikely that the result of such enemy litigiousness would be a conflict between judicial and military opinion highly comforting to enemies of the United States.

Other authorities also have emphasized that the Anglo-American common law tradition includes no place for habeas petitions filed by enemy aliens in military custody outside our territory. Law Professor Peter Lushing, in an internet posting commenting on the Graham amendment shortly after it passed the Senate, put the matter quite colorfully: ''the guys in the powdered wigs would have flipped over the idea that habeas extends to foreigners we are in combat with who have been captured and are being held by us abroad.'' He concludes: ''the Rasul decision has extended habeas far beyond what anybody alive during the ratification of the Constitution would have envisioned.''

Former U.S. Attorney General William Barr testified on the subject of detainees in the war on terror before the Senate Judiciary Committee on June 15 of this year. His testimony made a considerable impact on members of the committee—it persuaded several of us that something needed to be done legislatively to correct the current situation. Here is what Attorney General Barr had to say about the history of habeas and detainees:

The determination that a particular foreign person seized on the battlefield is an enemy combatant has always been recognized as a matter committed to the sound judgment of the Commander in Chief and his military forces. There has never been a requirement that our military engage in evidentiary proceedings to establish that each individual captured is, in fact, an enemy combatant.

Attorney General Barr went on to note:

World War II provides a dramatic example. During that war, we held hundreds of thousands of German and Italian prisoners in detention camps within the United States. These foreign prisoners were not charged with anything; they were not entitled to lawyers; they were not given access to U.S. courts; and the American military was not required to engage in evidentiary proceedings to establish that each was a combatant.

The concerns that were expressed in the passage from Eisentrager that I quoted earlier also have been expressed by other, more recent commentators, with the present conflict against Islamic extremism in mind. For example, in a 2003 article in George Washington Law Review, law professor John C. Yoo notes the special importance of ''interrogating enemy combatants for information about coming attacks'' in this conflict, and concludes:

. . . de novo judicial review threatens to undermine the very effectiveness of the military effort against al-Qaeda. A habeas proceeding could become a forum for recalling commanders and intelligence operatives from the field into open court; disrupting overt and covert operations; revealing successful military tactics and methods; and forcing the military to shape its activities to the demands of the judicial process.

Similarly, Andrew McCarthy, a former federal prosecutor who led the case against Sheik Omar Abdel Rahman, offered a stinging criticism of Rasual the day after the Supreme Court issued its opinion. He stated that:

How can it conceivably be appropriate to impose on our soldiers the burdens of stopping to collect evidence and write incident reports in the middle of fighting a war? Of course they do a measure of that now—after all, it is much in their interest correctly to sort out whom to hold and whom to release. But, until now, that has certainly not been done with the rigor anticipation of litigation will doubtless produce. It is not enough to say, hopefully, that U.S. courts will be indulgent given what's involved. Empirically, judicial demands on governmental procedural compliance become steadily more demanding over time, and government naturally responds by being even more internally exacting to avoid problems. In no time flat, what was once thought a trifling inconvenience becomes a major expenditure—in this case one that will inevitably detract from the military mission which is the bedrock of our safety.

McCarthy also summarized why the Rasul decision is at war with the role and duties of the Federal judiciary in our constitutional framework:

In the Framers' ingenious construct, the courts of the United States are supposed to be a bulwark protecting members of the uniquely American community—i.e., citizens of the United States and those aliens who, by their lawful participation in our national life, have immersed themselves into the fabric of American society—from the excesses of an oppressive executive or a legislature insufficiently heedful of their fundamental rights. It is the institution that ensures the law and order a free people must have in order to thrive.

Nevertheless, as manifested in Rasul, yesterday's case involving claims of foreign enemy combatants captured on faraway battlefields and held by the military in Guantanamo Bay, Cuba—an installation outside the jurisdiction of any U.S. court—the judiciary is no longer a neutral arbiter there to ensure that Americans get a fair shake from their government and its laws. Instead, it is evolving, or morphing, into a sort of United Nations with teeth. It has seized the mantle of international arbiter, ensuring that the world—including that part of it energetically trying to kill Americans—has a forum in which to press its case against the United States.

McCarthy went on to conclude: ''Rasul is a dangerous decision. Congress should slam the door on al-Qaeda today.''

And again, former Attorney General Barr also commented on this same question—on the impracticality of applying judicial process and standards to questions of the detention of enemy combatants. Because of his authority and the force of his arguments, I quote from his June 15 testimony at length:

There appear to be courts and critics who continue to claim that the Due Process Clause applies and that the CSRT process does not go far enough. I believe these assertions are frivolous.

I am aware of no legal precedent that supports the proposition that foreign persons confronted by U.S. troops in the zone of battle have Fifth Amendment rights that they can assert against the American troops. On the contrary, there are at least three reasons why the Fifth Amendment has no applicability to such a situation. First, as the Supreme Court has consistently held, the Fifth Amendment does not have extra-territorial application to foreign persons outside the United States. As Justice Kennedy has observed, ''[T]he Constitution does not create, nor do general principles of law create, any juridical relation between our country and some undefined, limitless class of non-citizens who are beyond our territory.'' Moreover, as far as I am aware, prior to their capture, none of the detainees had taken any voluntary act to place themselves under the protection of our laws; their only connection with the United States is that they confronted U.S. troops on the battlefield. And finally, the nature of the power being used against these individuals is not the domestic law enforcement power—we are not seeking to subject these individuals to the obligations and sanctions of our domestic laws—rather, we are waging war against them as foreign enemies, a context in which the concept of Due Process is inapposite.

In society today, we see a tendency to impose the judicial model on virtually every field of decision-making. The notion is that the propriety of any decision can be judged by determining whether it satisfies some objective standard of proof and that such a judgment must be made by a ''neutral'' arbiter based on an adversarial evidentiary hearing. What we are seeing today is an extreme manifestation of this—an effort to take the judicial rules and standard applicable in the domestic law enforcement context and extend them to the fighting of wars. In my view, nothing could be more farcical, or more dangerous.

These efforts flow from a fundamental error—confusion between two very distinct constitutional realms. In the domestic realm of law enforcement, the government's role is disciplinary—sanctioning an errant member of society for transgressing the internal rules of the body politic. The Framers recognized that in the name of maintaining domestic tranquility an overzealous government could oppress the very body politic it is meant to protect. The government itself could become an oppressor of ''the people.''

Thus our Constitution makes the fundamental decision to sacrifice efficiency in the realm of law enforcement by guaranteeing that no punishment can be meted out in the absence of virtual certainty of individual guilt. Both the original Constitution and the Bill of Rights contain a number of specific constraints on the Executive's law enforcement powers, many of which expressly provide for a judicial role as a neutral arbiter or ''check'' on executive power. In this realm, the Executive's subjective judgments are irrelevant; it must gather and present objective evidence of guilt satisfying specific constitutional standards at each stage of a criminal proceeding. The underlying premise in this realm is that it is better for society to suffer the cost of the guilty going free than mistakenly to deprive an innocent person of life or liberty.

The situation is entirely different in armed conflict where the entire nation faces an external threat. In armed conflict, the body politic is not using its domestic disciplinary powers to sanction an errant member, rather it is exercising its national defense powers to neutralize the external threat and preserve the very foundation of all our civil liberties. Here the Constitution is not concerned with handicapping the government to preserve other values. Rather it is designed to maximize the government's efficiency to achieve victory—even at the cost of ''collateral damage'' that would be unacceptable in the domestic realm.

Attorney General Barr brought these concerns into relief with the following hypothetical example:

Let me posit a battlefield scenario. American troops are pinned down by sniper fire from a village. As the troops advance, they see two men running from a building from which the troops believe they had received sniper fire. The troops believe they are probably a sniper team. Is it really being suggested that the Constitution vests these men with due process rights as against the American soldiers? When do these rights arise? If the troops shoot and kill them—i.e., deprive them of life—could it be a violation of due process? Suppose they are wounded and it turns out they were not enemy forces. Does this give rise to Bivens' Constitutional tort actions for violation of due process? Alternatively, suppose the fleeing men are captured and held as enemy combatants. Does the due process clause really mean that they have to be released unless the military can prove they were enemy combatants? Does the Due Process Clause mean that the American military must divert its energies and resources from fighting the war and dedicate them to investigating the claims of innocence of these two men?

This illustrates why military decisions are not susceptible to judicial administration and supervision. There are simply no judicially-manageable standards to either govern or evaluate military operational judgments. Such decisions inevitably involve the weighing of risks. One can easily imagine situations in which there is an appreciable risk that someone is an enemy combatant, but significant uncertainty and not a preponderance of evidence. Nevertheless, the circumstances may be such that the President makes a judgment that prudence dictates treating such a person as hostile in order to avoid an unacceptable risk to our military operations. By their nature, these military judgments must rest upon a broad range of information, opinion, prediction, and even surmise. The President's assessment may include reports from his military and diplomatic advisors, field commanders, intelligence sources, or sometimes just the opinion of frontline troops. He must decide what weight to give each of these sources. He must evaluate risks in light of the present state of the conflict and the overall military and political objectives of the campaign.

Attorney General Barr goes on to consider the practical consequences of applying civilian due process concepts in the context of military detention of enemy combatants:

The imposition of such procedures would fundamentally alter the character and mission of our combat troops. To the extent that the decisions to detain persons as enemy combatants are based in part on the circumstances of the initial encounter on the battlefield, our frontline troops will have to concern themselves with developing and preserving evidence as to each individual they capture, at the same time as they confront enemy forces in the field. They would be diverted from their primary mission—the rapid destruction of the enemy by all means at their disposal—to taking notes on the conduct of particular individuals in the field of battle. Like policeman, they would also face the prospect of removal from the battlefield to give evidence at post-hoc proceedings.

Nor would the harm stop there. Under this due process theory, the military would have to take on the further burden of detailed investigation of detainees' factual claims once they are taken to the rear. Again, this would radically change the nature of the military enterprise. To establish the capacity to conduct individualized investigations and adversarial hearings as to every detained combatant would make the conduct of war—especially irregular warfare—vastly more cumbersome and expensive. For every platoon of combat troops, the United States would have to field three platoons of lawyers, investigators, and paralegals. Such a result would inject legal uncertainty into our military operations, divert resources from winning the war into demonstrating the individual ''fault'' of persons confronted in the field of battle, and thereby uniquely disadvantage our military vis-à-vis every other fighting force in the world.

Second, the introduction of an ultimate decision maker outside of the normal chain of command, or altogether outside the Executive Branch, would disrupt the unitary chain of command and undermine the confidence of frontline troops in their superior officers. The impartial tribunals could literally overrule command decisions regarding battlefield tactics and set free prisoners of war whom American soldiers have risked or given their lives to capture. The effect of such a prospect on military discipline and morale is impossible to predict.

Attorney General Barr also noted that ''Supreme Court's decision in Rasul was a statutory ruling, not a constitutional one.'' He went on to point out:

An important consequence follows: Congress remains free to restrict or even to eliminate entirely the ability of enemy aliens at Guantanamo Bay to file habeas petitions. Congress could consider enacting legislation that does so—either by creating special procedural rules for enemy alien detainees, by requiring any such habeas petitions to be filed in a particular court, or by prohibiting enemy aliens from hauling military officials into court altogether.

Obviously, the Congress has taken the former Attorney General up on his suggestion, particularly the third variation of it.

I should also say a few words about military commissions. The Judiciary Committee also heard enlightening testimony on the history of these commissions. Former Attorney General Barr commented on them as follows:

Throughout our history we have used military tribunals to try enemy forces accused of engaging in war crimes. Shortly after the attacks of 9/11, the President established military commissions to address war crimes committed by members of al-Qaeda and their Taliban supporters.

Again, our experience in World War II provides a useful analog. While the vast majority of Axis prisoners were simply held as enemy combatants, military commissions were convened at various times during the war, and in its immediate aftermath, to try particular Axis prisoners for war crimes. One notorious example was the massacre of American troops at Malmedy during the Battle of the Bulge. The German troops responsible for these violations were tried before military commissions.

As an aside, those disturbed by the tendency of some in the press and politics to take the side of the Guantanamo detainees—of those captured while at war with America—might find it interesting that the same phenomenon developed with regard to the Malmedy detainees. The Malmedy German soldiers were tried and convicted of massacring American POWs near the Belgian village of Malmedy during the Battle of the Bulge. This crime unquestionably occurred—the bodies of over 80 U.S. soldiers were recovered in a field, most of them shot in the head. Members of the German unit responsible for this crime later were captured and tried by a military commission. Over the years, these Nazi soldiers, at least some of whom unquestionably massacred American G.I.s, somehow managed to turn the tables on the U.S. military in the press and in political circles. Senator Joseph McCarthy took up their cause, as did other Senators. The most fanciful allegations of abuse made by these Nazi murderers were indulged by various prominent Americans, and the whole incident became a public relations embarrassment for the U.S. military. Eventually, this pressure campaign succeeded in winning the commutation of all death sentences given to the Malmedy killers, and all of the German soldiers involved—even their commander—were released from prison by the mid–1950s. For those who find it disturbing that the sympathies of the press (especially in Europe) and of various intellectuals have been misplaced on the side of the Guantanamo detainees, at least we can take comfort in the fact the perversions of truth and rank miscarriages of justice that have

resulted from such misplaced sympathy so far in this war pale in comparison to those that followed from Malmedy.

Perhaps first among those who would object to any sympathizing with the Guantanamo detainees would be Andrew McCarthy, the former Federal antiterror prosecutor. He has written often on this and other war-on-terror topics. I was pleased to see that shortly after the Graham/Kyl amendment first passed the Senate, he wrote a column for National Review Online lauding our efforts. It was titled ''Restoring Law and Order,'' and McCarthy's only complaint was that ''it has taken our national legislature nearly a year-and-a-half—during all of which we have been at war—to stir itself to address this serious national-security problem.'' So you can imagine my disappointment when, just two days later, Mr. McCarthy posted another column commenting on the final Senate language, which include some compromises to ensure bipartisan support. This column was titled ''Snatching Defeat from the Jaws of Victory.'' Some of its language I won't recite here. But its specific complaints bear scrutiny. Mr. McCarthy alleged that ''the senators resolved Tuesday that the ultimate decision about who is properly considered an 'enemy combatant,' should rest with federal judges, not our military commanders.'' As he characterized the final Senate language, ''a panel of robed lawyers will second-guess the determination of [our soldiers'] commanders on scene that certain captives warranted detention—that holding them would be beneficial to the war effort.'' Similarly, with regard to military commissions, Mr. McCarthy complained that ''everything that happens in the commission would be reviewed by judges if this measure passes.''

I do not think that these words are an accurate characterization of the Senate-passed language. I think that Mr. McCarthy probably relied on inaccurate characterizations of the language that were published in the press at the time rather than on the language itself. Nevertheless, Mr. McCarthy's complaints did cause me and others to take another look at the language, to make sure that it does what we intended.

Limited judicial review of the decisions of the CSRTs and military commissions is authorized by paragraphs 2 and 3 of subsection 1405(e) of the conference report. These paragraphs authorize the same two narrow judicial inquiries into the ''status determinations'' and ''final decisions'' of the CSRTs and military commissions. The difference in language here is not intended to connote any substantive difference in the scope of review—it simply attempts to accurately characterize the work of each entity: ''making status determinations'' for the CSRTs, and ''reaching final decisions'' for the military commissions.

The review authorized by each of these paragraphs goes only to the following questions: did the CSRTs and commissions use the standards and procedures identified by the Secretary of Defense, and is the use of these systems to either continue the detention of enemy combatants or try them for war crimes consistent with the Constitution and Federal law? The first inquiry I think is straightforward: did the military follow its own rules? This inquiry does not ask whether the military reached the correct result by applying its rules, or even whether those rules were properly applied to the facts. The inquiry is simply whether the right rule was employed.

As to the second inquiry, here the language has been further modified in order to make clear the narrow scope of the inquiry. The original Senate language spoke of whether ''subjecting'' an enemy combatant to the CSRT or commission systems was constitutional and legal. This formulation was somewhat illogical in that the detainee would not complain of the fact that he was forced to go through a CSRT—rather, he would want to challenge its adequacy as a means for justifying his continued detention. And in any event, our concern was to make clear that this language in no way invites a reevaluation of the correctness of the military's decision, even under a deferential standard of review. Nor does it invite an as-applied challenge. All that this language asks is whether using these systems is good enough for the ends that they serve—to justify continued detention or to try an enemy combatant for war crimes. The only thing that this provision authorizes is, in effect, a facial challenge. In fact, we anticipate that once the District of Columbia Circuit decides these questions in one case, at least so long as military orders do not substantially change, that decision will operate as circuit precedent in all future cases, with no need to relitigate this second inquiry in the future. In effect, the second inquiry—into the constitutionality and lawfulness of the use of CSRTs and commissions—need only be decided once by the court.

It bears quoting some of the thinking that undergirds the establishment of these review standards. Attorney General Barr, in his June 5 testimony before the Judiciary Committee, describes the philosophy and approach that paragraph 2's scope of review for CSRTs is designed to reflect:

> It seems to me that the kinds of military decisions at issue here—namely, what and who poses a threat to our military operations—are quintessentially Executive in nature. They are not amenable to the type of process we employ in the domestic law enforcement arena. They cannot be reduced to neat legal formulas, purely objective tests and evidentiary standards. They necessarily require the exercise of prudential judgment and the weighing of risks. This is one of the reasons why the Constitution vests ultimate military decision-making in the President as Commander-in-Chief. If the concept of Commander-in-Chief means anything, it must mean that the office holds the final authority to direct how, and against whom, military power is to be applied to achieve the military and political objectives of the campaign.
>
> I am not speaking here of ''deference'' to Presidential decisions. In some contexts, courts are fond of saying that they ''owe deference'' to some Executive decisions. But this suggests that the court has the ultimate decision-making authority and is only giving weight to the judgment of the Executive. This is not a question of deference—the point here is that the ultimate substantive decision rests with the President and that courts have no authority to substitute their judgments for that of the President.

And the thinking that underlies paragraph 3's scope of review for military-commission decisions is well articulated in Johnson v. Eisentrager:

> It is not for us to say whether these prisoners were or were not guilty of a war crime, or whether if we were to retry the case we would agree to the findings of fact or the application of the laws of war made by the Military Commission. The petition shows that these prisoners were formally accused of violating the laws of war and fully informed of particulars of these charges. As we observed in the Yamashita case, ''If the military tribunals have lawful authority to hear, decide and condemn, their action is not subject to judicial review merely because they have made a wrong decision on disputed facts. Correction of their errors of decision is not for the courts but for the military authorities which are alone authorized to review their decisions.'' ''We consider here only the lawful power of the commission to try the petitioner for the offense charged.

There is another matter that I should mention before I yield the floor to my colleague from South Carolina. Some have asked why the jurisdiction-removing language in the bill is limited to Guantanamo. The answer is that Rasul is only about Guantanamo. Although the opinion contains the discussion of Ahrens and Braden that undercuts the ''territorial-jurisdiction'' rule for habeas courts, in the end the decision appears to be based on the unique status of the naval station at Guantanamo Bay—the permanent nature of the lease, for example, which can only be terminated by the United States. Justice Kennedy adopted a similar focus in his concurring opinion. I believe that Justice Kennedy's concurrence goes so far as to declare that Guantanamo is in practical respects a U.S. territory.

Some have raised the concern that the logic of Rasul will be extended to U.S. military and intelligence detention facilities in Iraq or Afghanistan. I think that such an extension would be very foolish and I do not think that the court will go there. I do not think that the Supreme Court is going to declare parts of Afghanistan or Iraq to be the territory of the United States. If the court does do so, we can of course legislatively overrule it, as we legislatively overrule Rasul today. But I do not think that it is either necessary, or respectful of the court's capacity for common sense, to preemptively overrule such an outlandish hypothetical decision. Does the Senator from South Carolina agree?

Mr. GRAHAM. Yes, my friend from Arizona is correct, our language applies only to Guantanamo just because

we understand that the Supreme Court only extended the jurisdiction of the courts over the detainees held at Guantanamo. And since the Rasul decision was based on the habeas statute in the U.S. Code, I am very comfortable amending that statute as a proper congressional response to the Court's decision.

As I stated repeatedly to a number of my colleagues, we did not want to deprive the courts of jurisdiction to hear cases filed on behalf of detainees in Iraq because we are confident that, as the law stands now, those cases are already barred by previous Supreme Court decisions, which the Rasul decision left in place.

We should always be careful when dealing with our co-equal branches. Just as we do not appreciate it when they stray into our areas of constitutional responsibility, we should always be willing to refrain from straying into theirs unnecessarily. As I read the Rasul decision, these other cases from other parts of the world are still subject to the Eisentrager opinion and will not be considered by U.S. courts.

And so, our language is limited to Guantanamo. To my friends who counseled that we should extend our jurisdiction modification to those cases being filed on behalf of Iraqis held in accordance with the Geneva Convention, I would just counsel them to be patient. I cannot imagine the Court extending its jurisdiction halfway around the world to involve what is almost exclusively an executive branch function. However, should that become necessary, I am perfectly willing to modify our courts' jurisdiction again to ensure that does not happen. But again, in truth, especially after our very robust action here today, I cannot even conceive of such a decision by the Supreme Court.

Mr. KYL. Well, that is what I thought before Rasul was decided. But we can cross that bridge if we get to it.

Mr. GRAHAM. Mr. President, I would also like my esteemed colleague from Arizona, Senator KYL, to address the misunderstandings that seem to have made their way into the press. For instance, when I returned from Iraq this morning, I was surprised to see the New York Times editorial page making some fundamental mistakes about what our legislation does.

Mr. President, I would also request unanimous consent to have the New York Times editorial entitled Ban Torture. Period. from December 16, 2005 entered in the RECORD.

The first sentence reads, ''It should have been unmitigated good news when President Bush finally announced yesterday that he would back Senator JOHN MCCAIN's proposal to ban torture and ''cruel, inhuman or degrading'' treatment at United States prison camps. Nothing should be more obvious for an American president than to support a ban on torture.'' I agree, nothing should be more obvious. And I'd like to applaud the New York Times for finally endorsing the actions President Reagan took when we signed the Convention Against Torture on April 18, 1988, and the Senate ratified the Convention on October 21, 1994.

But since they appear to be laboring under some confusion, I would like to clarify how and when our antitorture statutes apply. First, torture has been illegal for quite some time. Indeed, Section 2340A of Title 18 of the United States Code specifically provides for the prosecution of people who torture overseas. And most of the techniques of torture, beatings, improper imprisonment, and threats have long been part of the criminal code of the United States.

I strongly supported Senator MCCAIN'S amendment each and every time it came up. I am extremely pleased it passed. But, make no mistake, it does not make torture illegal. Torture has long been illegal. What the McCain language does is make a very clear statement that we will treat people humanely while we have them in our custody. The McCain amendment is a very clear policy statement that is in accord with the best of American tradition. But it does not ban torture. Accordingly, the Graham-Levin-Kyl provisions do not equivocate in any way regarding torture. The Times editors, regrettably, for I appreciate the place the Times holds in our public discourse, do not appear to understand what they are talking about.

I would like to address one other statement the Times makes. They state, and I quote, that ''What is at stake here, and so harmful to America's reputation, is the routine mistreatment of prisoners swept up in the so-called war on terror.'' Now I take great exception to this baseless smear of our soldiers and marines. It is said off-handedly, almost as if everyone takes it for granted that the fine men and women of our armed services routinely mistreat our prisoners.

Well I will tell you, I for one don't take it for granted that the fine people who are putting their lives on the line to protect our Nation routinely mistreat the prisoners in their care. I believe they follow the orders that their superiors give them, orders based on such policy statements as Senator MCCAIN'S or the Army Field Manual, and they follow them to the best of their ability.

Now, are there going to be bad apples? As a former JAG prosecutor and defense counsel, I can tell you affirmatively, yes, there will be. And they will be arrested, tried, convicted, and will serve long sentences. Those few individuals who do not live up to the high standards of the vast majority of our honorable service members, will be held accountable for their actions.

Our troops do not deserve such a slander, and I call on the New York Times to take back the vile assertion they have made against the people who exemplify the best our Nation has to offer.

Mr. KYL. Mr. President, I see that we are nearing the end of our allotted time. If I could quickly address a few other minor issues and summarize briefly. It is important to note that the limited judicial review authorized by paragraphs 2 and 3 of subsection (e) are not habeas-corpus review. It is a limited judicial review of its own nature. All habeas actions are terminated by this bill. I hope that this change will also put to rest any arguments that extending habeas to prisoners also extends to them some type of substantive rights. I do not believe that supposition is correct because habeas is a vehicle for asserting rights, not a source of rights. The fact that an individual has access to habeas does not mean that he has any of the rights that he asserts. But in any event, because this bill leaves no habeas in place, that debate need not be rejoined.

Also, some have suggested that by vesting exclusive jurisdiction in the DC circuit for the paragraph 2 and 3 appeals, this bill bars even Supreme Court appellate review. That was not the drafters' intention, nor do I believe that it is a correct reading of the legislative language. Supreme Court review is implicit, or rather, authorized elsewhere in statute, for all judicial decisions. It is rarely mentioned expressly. In fact, when it is mentioned, it is sometimes to preempt Supreme Court review. Far example, the limit on successive federal habeas petitions for state prisoners in section 2244 bars petitions for certiorari following a three-judge panel's decision on a successive-petition application. The clear implication of these provisions is that Supreme Court review is implicitly allowed except where expressly barred, and thus since it is not barred here, it is allowed.

UNIFORM STANDARDS OF INTERROGATION FOR DETAINEES

Mr. MCCAIN. I would like to thank the chairman and the ranking member for their untiring work to bring the Defense authorization bill to closure. In doing so, Congress takes a major step in ensuring that America stays true to its fundamental values. By establishing uniform standards for the interrogation of Department of Defense detainees, and by ensuring that the United States will not subject any individual to cruel, inhuman or degrading treatment or punishment, we are better able to wage and win the war on terror. This would not have been possible without the work of the chairman, the ranking member, and other members of this committee, including most notably the Senator from South Carolina.

I would also like to thank the President and the national security advisor for their efforts in resolving the difficult issues underlying the amendment. In reaching agreement, we make sure that the world knows that the United States does not—and by law cannot engage in torture or cruel, inhuman or degrading treatment. During our talks, the administration raised legitimate concerns about legal claims

facing civilian interrogators. Based on these concerns, the bill includes language that will allow accused civilian interrogators—like military interrogators—a robust defense if a person of ordinary sense and understanding would have believed he was following a lawful directive. It further includes language providing legal counsel to interrogators. These provisions are modeled on provisions drawn from the Uniform Code of Military Justice.

With the detainee treatment provisions, Congress has clearly spoken that the prohibition against torture and other cruel, inhuman or degrading treatment should be enforced and that anyone engaging in or authorizing such conduct, whether at home or overseas, is violating the law. Sections 1402 and 1403 of Title XIV of this bill do not create a new private right ot action. At the same time, these provisions do not eliminate or diminish any private right of action otherwise available. It is our intent not to disable that in any way.

Mr. WARNER. To have worked from the beginning with Senator MCCAIN then with Senators GRAHAM, LEVIN and KYL was a privilege, and, to achieve legislation which was needed for all our Nation's citizens was a humble, but very fulfilling, experience. We realized both the necessity for action in this area and the vital importance of dealing with the increasing flow of litigation involving Guantanamo detainees.

This legislative history should document that the McCain provisions, sections 1402 and 1403 of the bill, do not create a private right of action. Title XIV of the bill does provide a new affirmative defense that may be applied to civil actions brought under other statutes and to criminal prosecutions. This is essential to give potential defendants fair rights to defend themselves. Further, language was included affording the same right to counsel and to payment of litigation costs at Government expense for non-military personnel, in both foreign and domestic courts, that is presently extended to members of the Armed Forces.

Mr. LEVIN. I am pleased that the conference report contains the full text of the McCain amendment on torture, without change. This language firmly establishes in law that the United States will not subject any individual in our custody, regardless of nationality or physical location, to cruel, inhuman, or degrading treatment or punishment. The amendment provides a single standard—for ''cruel, inhuman, or degrading treatment or punishment''—without regard to what agency holds a detainee, what the nationality of the detainee is, or where the detainee is held.

It has never been my understanding that the McCain amendment would, by itself, create a private right of action. I do not believe that the amendment was intended either to create such a private right of action, or to eliminate—or undercut any private right of action such as a claim under the Alien Tort Statute—that is otherwise available to an alien detainee. Rather, the McCain amendment would establish a legal standard applicable to any criminal prosecution or any private right of action that is otherwise available under law. That would not be changed in any way by the affirmative defense added in the new section.

Mr. GRAHAM. I was pleased to support this legislation and work toward its enactment from the beginning. Under section 1402, our troops now have one standard—the Army Field Manual—for their interrogations. In section 1403, we close the loophole in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As National Security Advisor Stephen Hadley said, ''those standards, as a technical, legal matter, did not apply abroad. And that is what Senator MCCAIN, in the second section of his legislation, wanted to address—wanted to make clear that those would apply abroad. We applied them abroad as a matter of policy; he wanted to make sure they applied as a matter of law. And when this legislation is adopted, it will.'' I agree that these sections do not create a new private right of action, but that they are binding on the executive and may be applicable to actions brought under other statutes.

Mr. KENNEDY. Mr. President, I ask unanimous consent to have a letter from Mr. Ed Tong printed in the RECORD for the consideration of the fiscal year 2006 Defense Authorization Act. The letter reflects the view of a supporter of the minority small business contracting program, which is reauthorized in this bill.

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

ASIAN, INC.

*San Francisco, CA, December 19, 2005.*

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

DEAR SENATOR KENNEDY: I write to urge you to support the reauthorization of the Department of Defense 1207 program. The program has been repeatedly reauthorized since its original enactment, and it remains necessary today. Minorities have historically been disadvantaged with regard to the awarding of federal, state and municipal contracts. The impact of such discrimination and exclusion has been especially felt in Northern California—and specifically within the San Francisco Bay area.

The 1992 Minority Business Census of the U.S. Census Bureau reported that San Francisco has over 16,353 minority-owned businesses operating in the area. That statistic makes San Francisco the fourth largest business locale in the country for minority-owned businesses. Despite the large number of minority-owned business, discriminatory and harassing treatment is commonly experienced.

Specifically, Asian American construction firms in San Francisco, have encountered discriminatory and harassing treatment at the hands of the craft unions and city government through the San Francisco's Office of Labor Standards Enforcement (OLSE). OLSE was created in 2000, to enforce the prevailing wages of crafts set by the state's Department of Industrial Relations. In fact, OLSE has differentially chosen to conduct its audits and impose higher penalties against many of San Francisco's minority craft businesses. At its inception of enforcement, the OLSE specifically targeted Chinese businesses. The statistics at that time showed that Chinese businesses had around a 5% chance of obtaining a prime contract they bid on, but a 50% probability of their project being inspected and audited by the OLSE. At present, OLSE still disproportionately targets minority businesses, whether they are union or non-unionized construction companies. Left with no avenue through which to remedy its grievances, many Asian American businesses have turned to ASIAN, Inc. for assistance

In my role as ASIAN, Inc.'s Program Manager in our Business & Economic Development Division, I have had personal experience in speaking with Asian American businesses dealing with discriminatory treatment. ASIAN, Inc. is a nonprofit technical assistance and research organization that works to strengthen the infrastructure of Asian American communities in Northern California and to assist in their physical, economic, and social development. ASIAN, Inc. has been in operation for 34 years. Over the years, the organization has helped over 500 disadvantaged businesses obtain business loans through partnerships with the City of San Francisco's Office of Community Development, the State of California, the U.S. Department of Commerce Minority Business Development Agency, the U.S. Small Business Administration, and many banks and other private lenders. Still, discrimination continues to pose barriers for many of the businesses with which we work

Because ASIAN, Inc.'s role has been to provide strategic information and technical assistance in order to promote the ability of Asian Americans to compete in mainstream society—including achieving success for their businesses and participating in public decision-making—the organization has been in a position to witness the experiences of Asian American businesses in the San Francisco Bay Area.

Notably, several Asian American businesses came to ASIAN, Inc. for assistance after the OLSE imposed significant penalties upon their businesses, allowed those businesses no opportunity to rectify any alleged violations prior to making a finding, or to present their sides of the story. Initially there was no appeals process built into the Ordinance. To the presidents and owners of these businesses, it felt as if the OLSE was targeting them because they were minority owned and because of the ongoing disputes between Asian businesses and the trade unions in the area. The targeting of Asian American firms by OLSE for inspection and audits made obtaining contracts difficult when it became known that a business was being inspected by the OLSE.

ASIAN, Inc.'s work with the OLSE is by no means unique but rather signifies merely one of many types of discrimination experienced by the Asian American businesses that contact our organization. In fact, the OLSE situation is quite emblematic of the larger underlying problems that minority businesses face. Discrimination is not limited to the local or municipal level. Asian American businesses have experienced discrimination in the awarding of local agency contracts, the issuance of bonds and insurance policies, and the provision of necessary materials and material quotes by suppliers.

For example, I personally have heard of complaints/testimonials from minority businesses about:

The use of racial slurs or epithets against minority owners or employees, One Asian

firm owner used workers of Mexican ancestry on a job, and other white subcontractors challenged him and asked ''Why are your illegal workers on my job site.'' Also, an institution's administrator might use the phrase ''Your kind are the majority now.'' For another Asian American owner, when his workers took items from the trash bins he was told to stop his workers from doing so. As ''You may be a nice guy, but you are not one of us.''

The exclusion of minority businesses from informal business networks such as the Associated General Contractors. Or not invited to go golfing with them, even when the other group was looking for a foursome.

The refusal to use minority businesses on private jobs even when they are used on government jobs where minority business programs are in place. For example, Nibbi Brothers Construction will use numerous minority firms when doing public works projects (and the locale's program encourages minority participation) but not ask them to bid on their private works projects. This was also true for a general contractor (SJ Amoroso) that uses minority firms in their public works jobs but one white subcontractor almost exclusively for their roofing work, in their private works projects.

The existence of the old boys network to justify doing business with one's own cronies. For example, with Asian firms that have become prime contractors, white subcontractors often won't bid for the subcontracting work, or will hedge their bids and draw out the bidding process in deciding whether they want to work with a minority prime contractor

The non-enforcement of nondiscrimination requirements and disparate treatment by government inspectors. For example, when as the prime contractor and your project is audited, all certified payrolls are asked of your minority subs, but your white sub will not be asked to provide a certified payroll. In another case with an institution in the City, the inspector would not approve the work, and make additional demands that were not put it in writing. For example, he demand that a electrical panel be explosion proof though it was not required by the specs. He also demanded that materials be UL (Underwriters Laboratories) listed although the specs did not require it. Also, when the Asian prime contractor reported the error of his white subcontractor to the engineer, he was told that this was not acceptable. However, when the white subcontractor reported his error to the white engineer the error was allowed to stand without correction.

The bundling of contracts which minority businesses could bid for if not for bundling. For example, when work is required for a number of school sites, a number of 3–4 schools may be bundled even when the type of work in each school is different. This will bring the total project and bonding requirements to $10 million dollar when without bundling the individual projects would cost about $2–3 million dollars.

The tendency to pay minority contractors slower or not at all compared to white contractors. For example, San Francisco city departments and institutions have a poor reputation for paying in a timely manner and so the cumulative debt on a number of projects/contracts owed to Asian businesses has been in excess of $1 million dollars.

The provision of different quotes from suppliers to companies depending upon the race of the business owner, or to provide those supplies at an exorbitant rate to a minority contractor.

The refusal to provide higher capacity bonds.

Our nation's small businesses are the backbone of this country's economy and the obstacles that impede the successes of U.S. businesses have enormous impact on the local economies these businesses support as well as the nation at large. This is especially true for minority-owned businesses that not only contribute to the country's economic base but have also traditionally provided jobs for minority youth and adults in ways that majority-owned business have not. As such, removing obstacles facing minority businesses is critical not only for our economy but for our nation's minority youth.

Minority contractors have a right to expect unbiased treatment in the awarding of contracts. The 1207 Program is a valuable means by which the federal government demonstrates fairness and equity in the area of government contracts. It is vitally important that the federal government recognizes and rectifies some of the problems faced by minority businesses across the country. The government's commitment to equality in the economic marketplace is an ongoing responsibility of our government, and the reauthorization of 1207 not only is in keeping with the spirit of that commitment but provides leadership by example to local government, banks, customers and suppliers that interact with minority-owned businesses.

Respectfully submitted,

EDMUND Y. TONG,
*Program Manager, Business & Economic Development Division.*

Mrs. CLINTON. Mr. President, the Senate is considering today the Department of Defense authorization conference report for the 2006 fiscal year. As a member of the Senate Armed Services Committee, I have attended numerous hearings and participated in the markup of this legislation. And I want to commend the Chairman of the Senate Armed Services Committee, Senator WARNER, and the ranking member, Senator LEVIN, for the serious, bipartisan approach they took in preparing the Senate version of the bill.

The DOD authorization bill is critically important, particularly with our servicemen and women are serving bravely in Iraq, Afghanistan and around the world. We owe it to our men and women in uniform to do everything we can to support them.

While what has emerged from conference is not perfect, the bill contains a wealth of positive provisions in keeping with the responsibility of Congress to our men and women in uniform.

When we first considered the DOD authorization bill in July, the Senate accepted an amendment Senator GRAHAM and I offered to make Tricare available to all National Guard members and reservists during the House-Senate conference, we reached a compromise which will offer great opportunities for Guard members and reservists to join the Tricare Program.

At at time when approximately 40 percent of the men and women serving in Iraq are members of the National Guard and Reserve, and as Guard members and reservists are a serving in a new and expanding role in the global war on terror, we ought to do all we can to ensure that these men and women have the services and support they need and deserve. This bill marks further progress in this effort, increasing access to health benefits for our National Guard and Reserve and their families in New York and around the country. Providing the Guard and Reserves, as well as their families, with adequate support and benefits is the least that a grateful nation can do. Under the provision, all members of the Selected Reserve are eligible to enroll in the military health care program.The premiums are based on categories of eligibility:

Category 1: Members of the Selected Reserve who are called to active duty qualify for TRICARE Reserve Select, TRS. Under this program, established last year, a reservist would accumulate 1 year of TRS coverage for every 90 days of Active-Duty service. Monthly premiums during the years of accumulated eligibility are only 28 percent of the program cost. The Government picks up the remaining 72 percent. As has always been the case, coverage is free of charge while on active duty. This bill now permits accumulation of earned periods of coverage for frequently deployed personnel. In addition, it authorizes 6 months of transitional coverage for family members following the death of the Reserve member, if the member dies while in an inactive status.

Category 2: Members of the Selected Reserve who are not called to active duty and who otherwise do not qualify for health insurance due to unemployment or lack of employer-provided coverage are eligible to enroll in TRICARE for a 50-percent cost-sharing premium. The Government will pay the remaining 50-percent.

Category 3: Members of the Selected Reserve who do not fit into either of the above categories but would like to participate in TRICARE are eligible to do so for an 85-percent cost share. Employers are allowed and encouraged to contribute to the reservist's share. The Government contributes 15 percent of the costs.

This compromise is an important step forward in improving health care access for our Nation's guardsmen and reservists.

It is important to note as well that this expansion was the fruit of a bipartisan effort by Senator GRAHAM and myself, along with my colleagues Senator LEAHY and Senator DEWINE.

The conference report also includes another provision I offered, this one with Senator COLLINS, to improve financial education for our soldiers. It is a problem that has plagued military service men and women for years: a lack of general knowledge about the insurance and other financial services available to them.

This provision instructs the Secretary of Defense to carry out a comprehensive education program for military members regarding public and private financial services, including life insurance and the marketing practices of these services, available to them. This education will be institutionalized in initial and recurring training for

members of the military. This is important so that we don't just make an instantaneous improvement, but a truly lasting benefit to members of the military.

The legislation also requires that counseling services on these issues be made available, upon request, to members and their spouses. It is very important to include the spouses in this program because we all know that investment decisions should be made as a family. Too many times, a military spouse has to make these decisions alone, while a husband or wife is deployed.

This amendment requires that during counseling of members or spouses regarding life insurance, counselors must include information on the availability of Servicemembers' Group Life Insurance, SGLI, as well as other available products.

I am happy that my fellow Senators support this legislation and proud that the amendment was adopted in conference.

The legislation also includes a provision which will ensure the availability of special pay for members during rehabilitation from wounds, injuries, and illnesses incurred in a combat zone. Earlier this year, I learned of the story of Army SPC Jeffrey Loria, who was encountering pay problems while recovering at Walter Reed Army Medical Center. My inquiry to the Army in this matter corrected Specialist Loria's problems and also led to the discovery of pay problems for at least 129 other soldiers. I continued to follow up on the plight of wounded soldiers when I questioned each of the service secretaries about this topic in early March 2005, asking if they would support efforts to ensure that wounded Guard members and reservists did not lose their combat pay allowance while in a military hospital. Their unanimous answer was yes. I am proud to see the provision incorporated into the bill.

In addition, I am pleased that the House and Senate have agreed to provide hundreds of members of the National Guard who served at Ground Zero after the terrorist attacks the full Federal retirement credit for their service that they deserve. Many of the soldiers who served at Ground Zero, often for extended periods, were not officially put on Federal active duty and so did not receive Federal military retirement credit. I was proud to fight for this legislation as a House-Senate conferee, and I want to thank Congresswoman MALONEY and Congressman KING for their hard work to see the provision through the House of Representatives. I applaud Congress for accepting our arguments for those brave men and women of the National Guard who gave their all after the September 11 attacks and absolutely deserve this credit.

I am also glad to see that the final conference report includes no language to restrict the role that women can play in our Armed Forces. Women have a long history of proud service in our Armed Forces, and more than 200,000 women currently serve, making up approximately 17 percent of the total force. Thousands of women are currently serving bravely in Iraq, Afghanistan, and elsewhere. During my own visits to Iraq—as I am sure that many of my colleagues who have also visited Iraq can also attest—I witnessed women performing a wide range of tasks in a dangerous environment.

Our soldiers, both men and women, volunteered to serve their Nation. They are performing magnificently. There should be no change to existing policies that would decrease the roles or positions available to women in the Armed Forces. Earlier this year, I introduced, along with several of my colleagues, a sense-of-the Senate resolution stating that there should be no change to existing laws, policies, or regulations that would decrease the roles or positions available to women in the Armed forces.

Finally, I want to highlight several other provisions in the legislation that honor the commitment of this Congress to our men and women in uniform. The final bill includes a 3.1-percent pay raise for all military personnel as well as increases to the maximum amount of assignment incentive pay and hardship duty pay that our servicemen and servicewomen receive. The bill also calls for an increase of $60 million for childcare and family assistance services to support Active-Duty and Reserve military families.

Also included were measures to bolster the support and gratitude our Nation shows for the families of our men and women in uniform who have lost their lives in service to our country. The bill increases the survivor benefits to $100,000 for all Active Duty military decedents; payments would be retroactive, to include all those lost since the commencement of Operation Enduring Freedom. In addition, the conference report increases TRICARE benefits for the surviving children of those who have lost their lives while on active duty and calls for the establishment of a uniform policy on casualty assistance to improve the services provided to survivors and next of kin.

I am proud to support these provisions and proud to do all I can for these families.

Despite the positive sections of the conference report, many of which I have outlined above, there are also portions of the authorization bill that are deeply troubling. I fear that included in a bill that does so much to support our men and women in uniform are provisions that might also do a disservice to these brave Americans.

One in particular is the Graham-Levin-Kyl amendment, included in the conference report, governing the treatment of detainees at Guantanamo Bay.

Like all of my colleagues, I am deeply troubled by the circumstances that have opened our Federal courts to enemy combatants. Senator GRAHAM is correct that the present level of accessibility to our courts by individuals who would do us harm is unprecedented in our Nation's history.

However, the seeds of this situation were sown when the President chose our course for the war against terror. Rather than treating our detainees in accordance with the governing principles of military engagement, he chose to institute policies that demonstrate disrespect for the rule of law and have resulted in lowering our country's moral standing in the world. Had the President chosen instead to respect international conventions that provide due process protections, we would not be facing the unprecedented problem of having to make our courts open to our enemies.

I agree that this is an area long overdue for reform. Although it left much to be desired, I voted in favor of the Graham-Levin-Kyl amendment in its original form because it was an improvement over a harsh measure that would have eliminated almost entirely a detainee's ability to challenge his or her detention. In conference, however, House negotiators once again undermined much of the thoughtful deliberation that went into crafting the Graham-Levin-Kyl compromise, stripping out important provisions that would have prohibited the admission of evidence obtained through ''undue coercion'' and further limiting legal recourse available to detainees.

We must work toward a system that corrects the missteps made by the President and adopt a well-thought-out set of procedures that respects the rule of law and restores our Nation to its proper standing in the world. The system outlined by the Graham-Levin-Kyl amendment as provided in the DOD Authorization conference report falls short of this measure.

The Defense authorization conference report contains a great deal that we in this body can look to with pride. That is why I support the bill as a whole and why I voted in favor of it. We face real challenges and threats as a nation, and our men and women in uniform are, every single day, serving with courage on the front lines in defense of our values and our way of life. I do not vote without concern, however, in light of a few troubling provisions which I fear do not serve the interests of our country or our troops.

Mr. KERRY. Mr. President, the fiscal year 2006 Defense Authorization Act contains a number of provisions that take an important step towards the Military Family Bill of Rights I believe we need.

Among the final provisions, the legislation authorizes an increase of the death gratuity to $100,000 for all active-duty service members. I was pleased to originally offer this provision as an amendment to the fiscal year 2005 supplemental appropriations act earlier this year. I was happy to work with Senator LEVIN on this bill to bring this provision into reality.

I offered another amendment on the supplemental last spring to increase to 1 year the length of time surviving families of service members may reside in Government housing or receive the basic allowance for housing. It was signed into law then, but because it was part of the supplemental, it expired with the end of the fiscal year. The fiscal year 2006 National Defense Authorization Act makes this extension permanent.

I am also pleased that the final bill includes authorization for increased funding for Project Sheriff—an initiative of the Office of Force Transformation to provide our soldiers and marines with a full spectrum of lethal and nonlethal weapons when engaging enemies in an urban environment.

The Defense authorization bill includes other important provisions for our country: a 3.1-percent pay raise for military personnel; increased Army and Marine Corps end strength, and an expansion of TRICARE benefits for members of the Selected Reserve and their families.

Taken together, these provisions are important milestones. They are further testament of this Congress's and this country's determination to maintain the best trained, best equipped, best prepared, and most capable military on earth. It is also a recognition of the important contributions made by military families—families who give so much to this country.

When I voted for this legislation on the Senate floor, one essential aspect was that the limitations placed on the review of habeas corpus claims of Guantanamo Bay detainees were prospective only. I am pleased to say that the bill's effective date was not altered in conference. As a result, as the Supreme Court held in Lindh v. Murphy, it still employs the normal rule that our laws operate prospectively.

Mr. FEINGOLD. Mr. President, I am pleased that the Senate was finally able to debate and pass the Defense Authorization Act. It is indefensible that this important legislation was put on the backburner for so long; held back until the eleventh hour by the majority for various special interests and political reasons. The American people and the troops deserve better than that.

I am pleased that this bill includes important provisions for our men and women in uniform and their families. I am very pleased that we were able to include a 3.1 percent pay raise for all of our men and women in uniform as well as a host of bonus and incentive pays to help the military in its recruiting and retention efforts. The conference report also contains an important provision that permanently increases the death gratuity for those killed on active duty. Although the Senate's strong bipartisan efforts to make TRICARE available for the Guard and Reserve were again watered down in the conference report, the final bill still includes significant improvements in TRICARE access for all of our citizen-soldiers. These are just a few examples of the important provisions contained in this bill.

I am proud that the Congress has finally, definitively, sent such a strong message to the administration about the treatment of detainees by enacting the amendment of the senior Senator from Arizona. The lack of a clear policy regarding the treatment of detainees has been confusing and counterproductive. It has left our men and women in uniform in the lurch with no clear direction about what is and is not permissible. This failure on the part of the administration has sullied our reputation as a Nation, and hurt our efforts to promote democracy and human rights in the Arab and Muslim worlds. I have been proud to support Senator MCCAIN's amendment on interrogation policy because it should help to bring back some accountability to the process and restore our great Nation's reputation as the world's leading advocate for human rights.

Although I voted for the Department of Defense authorization bill, I am disappointed with the mixed messages that the Senate continues to send to the administration and the country on issues related to the detainees held at Guantanamo Bay. Even as we enact the important McCain amendment on torture, the conference report also includes the Graham amendment, which remains deeply troubling because of the restrictions it places on judicial review of detainees held at Guantanamo. However, it is important to note that the provision is limited in critical ways. The provision on judicial review of military commissions covers only ''final decisions'' of military commissions, and only governs challenges brought under that provision. In addition, the language in section 1405(e)(2) that prohibits ''any other action against the United States'' applies only to suits brought relating to an ''aspect of detention by the Department of Defense.'' Therefore, it is my understanding that this provision will not affect the ongoing litigation in Hamdan v. Rumsfeld before the Supreme Court because that case involves a challenge to trial by military commission, not to an aspect of a detention, and of course was not brought under this provision. Furthermore, it is important to make clear that this provision should not be read to endorse the current system of trial by military commission for those at Guantanamo Bay. This provision reflects, but certainly does not endorse, the existing status of those military commissions, which is that they are currently legal under a decision of the DC Circuit. However, the Supreme Court has not yet addressed the legality of such military commissions, and this amendment should not be read as any indication that Congress is weighing in on that issue. While I would have strongly preferred that this amendment not be included in the conference report, I think it is important to note these limitations on its practical effect.

I am pleased that the conference report contained a number of provisions I authored, including my amendment to enhance and strengthen the transition services that are provided to our military personnel by making a number of improvements to the existing transition and postdeployment/predischarge health assessment programs. The conference report also includes my amendment that corrects a flaw in the law that unintentionally restricted the number of families of injured servicemembers who qualify for travel assistance. The change in the law now ensures that families of injured servicemembers evacuated to a U.S. hospital get at least one trip paid for so that these families can quickly reunite and begin recovering from the trauma they have experienced.

The military's high operational tempo over the last 4 years led it to keep thousands of troops beyond their contractual separation dates through a policy often referred to as ''stop-loss.'' The Pentagon did a poor job of clearly disclosing to volunteers that they could be stop-lossed and so many who thought they had completed their military service found themselves deployed to a combat zone. It is not difficult to understand how this policy turned upside down the lives of the impacted troops and their families. The conference report includes an amendment I authored requiring the Department of Defense to report on the steps it is taking to clearly communicate the stop-loss policy to potential enlistees and re-enlistees. I hope that, by pushing the Department to report on the actions it is taken to ensure that potential recruits know the terms of their service, the Department will take quick action to address this problem.

Despite the unprecedented levels of defense spending, the Government Accountability Office recently found that the Department of Defense is not only doing a poor job in replacing equipment that is being rapidly worn out but is not even tracking its equipment needs. Military readiness has suffered as a result. I authored an amendment retained in the conference report requiring DOD to submit a comprehensive report in conjunction with the President's annual budget request that details DOD's program strategies and funding plans to ensure that DOD's budget decisions address these equipment deficiencies. Such a report will make DOD's equipment needs more transparent and will allow Congress to provide more effective oversight and hold the Department accountable.

I am disappointed that the conference report did not maintain the bipartisan amendment I authored establishing the Civilian Linguist Reserve Corps, CLRC, pilot project. Our Government is in desperate need of people with critical language skills and the CLRC model, which is strongly supported by the Defense Department, has

the potential of addressing this need in a fiscally responsible manner. It is unfortunate that the conferees chose to go another route.

In conclusion, I must note, as I have in all of the 13 years I have served in the Senate, my disappointment that we continue the wasteful trend of spending billions of dollars on Cold War-era weapons systems while not fully funding our current needs. This enormous bill could have been better. However, on balance this legislation contains many good provisions for our men and women in uniform and their families and that is why I support it.

Mr. CORNYN. Mr. President, I express my concern regarding the adoption of the McCain amendment as part of the National Defense Authorization Act. Although I am pleased the legislation now includes important protections for the brave men and women who are interrogating terrorists around the world, I am nevertheless concerned that this legislation may hinder our intelligence collection activities.

Many supporters of the amendment, including the mainstream media, claim that the legislation ''bans'' torture—leaving the impression that torture was somehow legal under our current laws. This is incorrect. Torture is prohibited under current U.S. law and treaty obligations, and President Bush has unequivocally stated that the United States will not engage in torture, and we will treat all detainees in a humane fashion. In fact, this legislation will likely prohibit current legal interrogation techniques that stop well short of torture and are providing valuable intelligence information.

We all agree that in order to achieve victory in the war on terror, the United States must have the very best intelligence we can acquire through technical means and the interrogation of captured terrorists. Many of these terrorists are highly trained to resist U.S. interrogation techniques. Although I adamantly oppose torture, I believe we must use every legal means—including aggressive interrogation methods that some may find objectionable—to get intelligence that will save American lives. I voted against the McCain amendment out of a deep concern that it would potentially limit certain interrogation methods that may be necessary to save American lives.

We know that aggressive—yet humane—interrogation techniques were instrumental in gaining valuable information from Khalid Sheikh Mohammed, a key architect of the 9/11 attacks, and other terrorists in U.S. custody. We must not abandon these important and legal questioning methods for the sake of political correctness. We must send a strong signal to terrorists everywhere that if they are captured by the United States, while they will be treated humanely, we will use every legal method to force them to reveal their designs on the United States.

Torture does not produce good intelligence. People who are tortured will tell their captors anything they want to hear and not the truth. More importantly, torture does not represent the values of America and all that we stand for as a Nation. However, we should not unnecessarily limit our military and intelligence agencies from aggressively interrogating those individuals who wish to kill innocent Americans. We must always remember that the terrorists who attacked America on 9/11 are relentless in their efforts to destroy us.

Finally, some have argued that the passage of the McCain amendment would have somehow prevented the heinous abuses that we saw at Abu Ghraib prison. This is patently false. The individuals who committed the abuses at Abu Ghraib knew their actions were against the law, yet they violated core American values. The perpetrators of these crimes are now being prosecuted, and the military has undertaken comprehensive reforms to prevent future abuses. As noted by the independent Schlesinger Panel in its report on detainee operations: ''There is no evidence of a policy of abuse promulgated by senior officials or military authorities.'' Our military has detained over 80,000 individuals and the instances of detainee abuse are extremely rare and they are prosecuted when discovered. To imply that our military or intelligence services are torturing detainees as a matter of policy is a distortion of reality.

In our efforts to demonstrate to the world that the United States does not torture terrorists, we must not weaken our ability to prosecute the war on terror. Our military and intelligence personnel must have the tools—including aggressive interrogation techniques—to question captured terrorists. I remain concerned that the McCain amendment, although admirable in its intent, may hinder our efforts to collect vital intelligence, and I make no apologies for endorsing all legal means of obtaining actionable intelligence that will save American lives.

Mr. GRAHAM. Mr. President, today I rise to comment upon the recently passed Defense authorization bill. That bill contained a Graham-Levin-Kyl amendment which dealt with the Combatant Status Review Tribunals and Military Commissions at Guantanamo Bay. I was very pleased to join with Senators LEVIN and KYL and others to offer this amendment, and I want to thank them for working so hard on this issue.

In rising today, I address one particular section of our amendment, the requirement that the tribunals consider whether evidence was coerced. In drafting this section, we were compelled to recognize three basic facts.

First, we were compelled to recognize the impracticality of importing domestic criminal protections into a forum constructed to administer what are essentially enemy soldiers; combatants for a very unique enemy, an enemy without uniforms, capitals, or cohesive command structures, but combatants nonetheless.

Second, we were forced to address the necessity of relying on evidence without a complete picture of how it was obtained; evidence that might be obscured by the fog of war, derived from battlefield intelligence, from classified sources, or even through unknown circumstances.

Lastly, we were required by our constitutional responsibilities to err on the side of protecting the American people. In instances where there is some doubt as to the evidence or the status of the detainee, the benefit of the doubt must go to the government as it seeks to discharge its first duty, providing for the common defense of our people.

In our efforts to balance these interests, we initially included an exclusionary rule for evidence obtained through ''undue coercion.'' We felt that the term ''undue coercion'' reflected the reality that, in the national security context, there is some level of coercive interrogation that is acceptable. We also understand that, at some point, the reliability of the information can be questioned as a result of the methods used to obtain it. I believe Guantanamo Bay serves a unique and necessary purpose in the war on terror, but we need to ensure that we are holding the right people.

However, upon reconsideration, we came to believe that the term ''undue coercion,'' being a new term without legal precedent, might not be as instructive as we required. Furthermore, a number of the military judge advocates we consulted were concerned that the exclusionary rule could limit them from considering evidence tainted by only an allegation of mistreatment.

Therefore, after much consultation with legal professionals, we decided to eliminate the ''undue'' qualifier. Unfortunately, striking the qualifier also eliminated the consideration of whether the information was obtained by acceptable sources and methods. Accordingly, we decided to refrain from mandating the exclusionary rule. Instead, our language requires, for the first time, the panels to consider the source of the information and the information's reliability. I am very confident our language provides for the proper consideration.

Now, to be sure, our language also provides for the benefit of the doubt to go to the government. In granting this benefit, however, we recognize that we are fundamentally different from our adversaries. Though we may fail at times, we strive to be fair and just and honorable. And because our military men and women exemplify those values, we can trust them to fairly administer this process. In the end, we must remember that this is a military administrative process, and, with the proper congressional and judicial oversight provided by our amendment, we must trust our professional military officers to do their jobs.

In our amendment as a whole, we sought to protect our national security while still striking the proper balance between aggressively interrogating detainees and providing a competent military administrative process for their status determination. I am confident that this new evidentiary standard serves that goal.

Mr. DURBIN. Mr. President, I rise to speak about the Detainee Treatment Act of 2005, which is included in the Defense authorization conference report.

The Detainee Treatment Act includes two provisions that were adopted in the Senate version of the Defense authorization bill: the McCain antihuman torture amendment and the Graham-Levin Detainee Amendment.

I was an original cosponsor of the McCain Antitorture amendment. I have spoken at length about the vital importance of this amendment on several other occasions. At this time, I simply want to reiterate a couple of points.

Twice in the last year and a half, I have authored amendments to affirm our Nation's long standing position that torture and cruel, inhuman, or degrading treatment are illegal. Twice, the Senate unanimously approved my amendments. Both times, the amendments were killed behind the closed doors of a conference committee—at the insistence of the Bush administration.

I am pleased that the administration has changed its position. As a result, it will now be absolutely clear that under U.S. law all U.S. personnel are prohibited from subjecting any detainee anywhere in the world to torture or cruel, inhuman, or degrading treatment.

The amendment defines cruel, inhuman, or degrading treatment as any conduct that would constitute the cruel, unusual, and inhumane treatment or punishment prohibited by the U.S. Constitution if the conduct took place in the United States. Under this standard, abusive treatment that would be unconstitutional in American prisons will not be permissible anywhere in the world.

Let me give you some examples of conduct that is clearly prohibited by the McCain amendment.

''Waterboarding'' or simulated drowning is a technique that was used during the Spanish Inquisition. It is clearly a form of torture. It creates an overwhelming sense of imminent death. It amounts to a clear-cut threat of death akin to a mock execution, which is expressly called mental torture in the U.S. Army Field Manual.

Sleep deprivation is another classic form of torture which is explicitly called mental torture in the U.S. Army Field Manual. It has been banned in the United Kingdom and by a unanimous Israeli Supreme Court, and the U.S. Supreme Court has repeatedly declared it unconstitutional, once citing a report that called it ''the most effective form of torture.''

The amendment also clearly bans so-called stress positions or painful, prolonged forced standing or shackling. Again, the U.S. Army Field Manual expressly calls these techniques ''physical torture.'' Moreover, one of the most recent Supreme Court cases on the extent of the prohibitions on ''cruel and unusual'' punishments expressly outlawed the use of painful stress positions, denouncing their ''obvious cruelty'' as ''antithetical to human dignity.''

The amendment bans the use of extreme cold, or hypothermia, as an interrogation tactic. Hypothermia can be deadly. Clearly it is capable of causing severe and lasting harm, if not death, and consequently is banned by both the Field Manual and the Constitution.

The amendment bans punching, striking, violently shaking, or beating detainees. Striking prisoners is a criminal offense and clearly unconstitutional. Moreover, while assaults like slapping and violent shaking may not seem as dangerous as beatings, shaking did, in fact, kill a prisoner in Israel, and the tactic has been banned by the Israeli Supreme Court. Numerous U.S. Supreme Court cases likewise prohibited striking prisoners.

The amendment bans the use of dogs in interrogation and the use of nakedness and sexual humiliation for the purpose of degrading prisoners.

No reasonable person, given the text of the amendment, the judicial precedents, and common sense, would consider these techniques to be permitted. Any U.S. official or employee who receives legal advice to the contrary should think twice before defying the will of the Congress on this issue.

The McCain antitorture amendment will make the rules for the treatment of detainees clear to our troops and will send a signal to the world about our Nation's commitment to the humane treatment of detainees.

I want to express again my opposition to the Graham-Levin amendment.

The amendment would essentially eliminate habeas corpus for detainees at Guantanamo Bay. In so doing, it would apparently overturn the Supreme Court's landmark decision in Rasul v. Bush.

No one questions the fact that the United States has the power to hold battlefield combatants for the duration of an armed conflict. That is a fundamental premise of the law of war.

However, over the objections of then-Secretary of State Colin Powell and military lawyers, the Bush administration has created a new detention policy that goes far beyond the traditional law of war. The administration claims the right to seize anyone, including an American citizen, anywhere in the world, including in the United States, and to hold him until the end of the war on terrorism, whenever that may be. They claim that a person detained in the war on terrorism has no legal rights. That means no right to a lawyer, no right to see the evidence against him, and no right to challenge his detention.

In fact, the Government has argued in court that detainees would have no right to challenge their detentions even if they claimed they were being tortured or summarily executed.

U.S. military lawyers have called this detention system ''a legal black hole.''

Defense Secretary Rumsfeld has described the detainees as ''the hardest of the hard core'' and ''among the most dangerous, best trained, vicious killers on the face of the Earth.'' However, the administration now acknowledges that innocent people are held at Guantanamo Bay. In late 2003, the Pentagon reportedly determined that 15 Chinese Muslims held at Guantanamo are not enemy combatants and were mistakenly detained. Almost 2 years later, those individuals remain in Guantanamo Bay.

Last year, in the Rasul decision, the Supreme Court rejected the administration's detention policy. The Court held that detainees at Guantanamo have the right to habeas corpus to challenge their detentions in Federal court. The Court held that the detainees' claims that they were detained for years without charge and without access to counsel ''unquestionably describe custody in violation of the Constitution, or laws or treaties of the United States.''

The Graham amendment would protect the Bush administration's detention system from legal challenge. It would effectively overturn the Supreme Court's decision. It would prevent innocent detainees, like the Chinese Muslims, from challenging their detention.

However, I do want to note some limitations on the scope of the Graham-Levin Amendment.

A critical feature of this legislation is that it is forward looking. A law purporting to require a Federal court to give up its jurisdiction over a case that is submitted and awaiting decision would raise grave constitutional questions. The amendment's jurisdiction-stripping provisions clearly do not apply to pending cases, including the Hamdan v. Rumsfeld case, which is currently pending before the Supreme Court. In accordance with our traditions, this amendment does not apply retroactively to revoke the jurisdiction of the courts to consider pending claims invoking the Great Writ of Habeas Corpus challenging past enemy combatant determinations reached without the safeguards this amendment requires for future determinations. The amendment alters the original language introduced by Senator Graham so that those pending cases are not affected by this provision.

The amendment also does not legislate an exhaustion requirement for those who have already filed military commission challenges. As such, nothing in the legislation alters or impacts the jurisdiction or merits of the Hamdan case.

Nothing in the legislation affirmatively authorizes, or even recognizes,

the legal status of the military commissions at issue in Hamdan. That is the precise question that the Supreme Court will decide in the next months. Right now, the military commissions are legal under a decision of the DC Circuit, and this amendment reflects but in no way endorses that present status. It would be a grave mistake for our allies around the world to think that we are endorsing this system at Guantanamo Bay—a system that has produced not a single conviction in the 4 years since the horrible attacks of September 11, 2001.

This provision attempts to address problems that have occurred in the determinations of the status of people detained by the military at Guantanamo Bay and elsewhere. It recognizes that the Combatant Status Review Tribunal, CSRT, procedures applied in the past were inadequate and must be changed going forward. As the former chief judge of the U.S. Foreign Intelligence Surveillance Court found, in In Re Guantanamo Detainee Cases, the past CSRT procedures ''deprive[d] the detainees of sufficient notice of the factual bases for their detention and den[ied] them a fair opportunity to challenge their incarceration,'' and allowed ''reliance on statements possibly obtained through torture or other coercion.'' Her review ''call[ed] into serious question the nature and thoroughness'' of the past CSRT process. The former CSRT procedures were not issued by the Secretary of Defense, were not reported to or approved by Congress, did not provide for final determinations by a civilian official answerable to Congress, did not provide for the consideration of new evidence, and did not address the use of statements possibly obtained through coercion.

To address these problems, this provision requires the Secretary of Defense to issue new CSRT procedures and report those procedures to the appropriate committees of Congress; it requires that going forward, the determinations be made by a Designated Civilian Official who is answerable to Congress; it provides for the periodic review of new evidence; it provides for future CSRTs to assess whether statements were derived from coercion and their probative value; and it provides for review in the DC Circuit Court of Appeals for these future CSRT determinations.

Mr. REID. In a statement on November 15 of this year, I explained my vote on amendments offered by Senators GRAHAM, LEVIN, and BINGAMAN regarding access to the Federal courts for detainees at Guantanamo Bay. Now that a conference report containing a revised version of these provisions is before us, I want to reiterate a few points.

I voted in favor of the Graham-Levin amendment because I believed it was better than the original Graham amendment. Similarly, I will vote in favor of this conference report because I favor the bill as a whole. But I have mixed views on the detainee provisions of the conference report, now in title X as the ''Detainee Treatment Act of 2005.''

On the one hand, I oppose stripping the courts of jurisdiction to hear habeas corpus petitions. The writ of habeas corpus is one of the pillars of the Anglo-American legal system, and limiting the Great Writ interferes with the independence of the judiciary and violates principles of separation of powers. The action we take today fails to address adequately the Bush administration's flawed policy of detaining suspects indefinitely, in secret, and without access to meaningful judicial oversight.

On the other hand, I support provisions in this bill that require improvements in the procedures and oversight of the Combatant Status Review Tribunals. It is important to ensure that status determinations of those detained at Guantanamo Bay and elsewhere are conducted in accordance with basic requirements of due process and fairness. The Defense Department must address the serious problems identified earlier this year by Judge Green, the former chief judge of the U.S. Foreign Intelligence Surveillance Court.

I am also pleased that the final law would allow courts to consider whether the standards and procedures used by the Combatant Status Review Tribunals are consistent with the Constitution and U.S. laws, that it does not apply retroactively to pending habeas claims that challenge past enemy combatant determinations reached without the safeguards this amendment requires, and that it would allow for court review of the actions of military commissions. I commend Senator LEVIN for his work on these issues.

On balance, I support the final detainee provisions with the following understandings:

First, I am pleased that Senator Graham's original language was altered so that the Supreme Court would not be divested of jurisdiction to hear the pending case of Hamdan v. Rumsfeld. In fact, subsection (h) of section 1005 makes clear that the DC Circuit and other courts will maintain jurisdiction to hear all pending habeas cases, in accordance with the Supreme Court's decision in Lindh v. Murphy.

Second, on a related but distinct point, I believe this act has no impact on the Supreme Court's ability to consider Hamdan's challenge at this preconviction stage of the military commission proceedings. As the DC Circuit held in Hamdan earlier this year, Ex Parte Quirin is a compelling historical precedent for the power of civilian courts to entertain challenges that are raised during a military commission process. Nothing in these sections requires the courts to abstain at this point in the litigation. Paragraph 3 of subsection 1005(e) governs challenges to ''final decisions'' of the military commissions and does not impact challenges like Hamdan's other cases not brought under that paragraph.

Third, this legislation does not represent congressional acquiescence in or authorization of the military commissions unilaterally established by the executive branch at Guantanamo Bay. Whether these commissions are legal is precisely the question the Supreme Court will soon decide in the Hamdan case. Rather, this legislation reflects the fact that the military commissions are currently legal under the DC Circuit's decision in Hamdan. We legislate against this backdrop in setting up a procedure to challenge the commissions, but we do not necessarily endorse the use of such commissions in this manner.

I hope that the Judiciary Committee soon considers legislation to define the rights of the detainees at Guantanamo with greater care and to develop sensible procedures for enforcing those rights. Congress should be guided by principles of human rights and the rule of law upon which this Nation was founded.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

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

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

The motion to lay on the table was agreed to.

## EXTENSION OF THE USA PATRIOT ACT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a bill at the desk relating to the extension of the PATRIOT Act which the clerk will report by title.

The legislative clerk read as follows:

A bill (S. 2167) to amend the USA PATRIOT Act, and for other purposes.

The Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, those of us working constructively to extend the USA PATRIOT Act have repeatedly offered to enter into a short-term extension while we work out the differences and improve this reauthorization legislation. The extension we are passing for 6 months is a commonsense solution that allows us to take a few more weeks to get this right for all Americans.

A majority of Senators—Republicans, Democrats, those Senators who voted for cloture, those who voted against cloture on the conference report that failed to pass the Senate—have joined on a letter urging the Republican leader to act on this commonsense offer by calling up a short-term extension bill.

As soon as it became apparent that the conference report filed by the Republican leadership would be unacceptable to the Senate, I joined on Thursday, December 8, in urging a 3-month extension to work out a better bill. On the first day the Senate was in session, Monday, December 12, Senator SUNUNU and I introduced such a bill, S. 2082. We

sent out a Dear Colleague letter to other Senators on December 13 and that bipartisan bill now has 47 cosponsors.

We offered this solution before the vote on the Senate floor last Friday. Contrary to the false claims and misrepresentations by some, there is no effort to do away with the PATRIOT Act. That is just not true. Along with others here in the Senate, I am seeking to mend and extend the PATRIOT Act, not to end it. There is no reason why the American people cannot have a PATRIOT Act that is both effective and that adequately protects their rights and their privacy.

Republican and Democratic Senators joined together last week to say we can do better to protect Americans' liberties while ensuring our national security is as strong as it can be.

Every single Senator—Republican and Democratic—voted in July to mend and extend the PATRIOT Act. I have joined with Senators of both parties in an effort to enact a short-term extension so that we can keep working to improve the bill. This is standard operating procedure in the Congress where we pass extensions in the nature of continuing resolutions regularly. The Sununu-Leahy bill to provide a 6-month extension, S. 2167, accomplishes this purpose. I thank the majority leader and Democratic leader for their leadership in passing this measure.

A clear majority of the Senate, Republican and Democrats, have come together and requested a short-term extension. These are Senators who voted for cloture and Senators who voted against cloture in an effort to improve the long-term extension of the PATRIOT Act. These are Republicans and Democrats.

No Democratic Senator opposes extending the PATRIOT Act. All of the 52 Senators who signed the letter to the majority leader urged its extension.

Our Nation is a democracy, founded on the principles of balanced government. We need to restore checks and balances in this country to protect us all and all that we hold dear. Our Congress and our courts provide checks on the abuse of executive authority and should protect our liberties.

We need to write the law so that Congress has provided its check in the law and so that courts can play their role, as well. All Americans need to take notice and need to demand that their liberties be maintained. We can do better and must do better for the American people.

Just this week, we celebrated the 214th anniversary of the passage of the Bill of Rights, the first 10 amendments to the Constitution of the United States. These amendments ensure some of our most vital freedoms, including the freedom of speech, religion and press in the first amendment. Within these amendments is also the right ''to be secure in our persons, houses, papers, and effects, against unreasonable searches and seizures.'' The Bill of Rights made clear not only the rights of the American people, but also the limitations on the power of government.

Just as we cannot allow ourselves to be lulled into a sense of false security when it comes to our national security, we cannot allow ourselves to be lulled into a blind trust regarding our freedoms and rights. We must remain vigilant on both counts or we stand to lose much that we hold dear.

In arguing for reauthorization of the USA PATRIOT Act, Attorney General Alberto Gonzales sought to assure us that ''concerns raised about the act's impact on civil liberties, while sincere, were unfounded.'' I am not reassured, however.

We need only pick up a morning newspaper to see how the overreaching of the Bush administration plagues our efforts to uphold democracy at home and throughout the world. We have seen secret arrests and secret hearings of hundreds of people for the first time in U.S. history; the abuse of detainees in U.S. custody; detentions without charges and denial of access to counsel; and the misapplication of the material witness statute as a sort of general preventive detention law. Such abuses harm our national security as well as our civil liberties because they serve as recruiting tools for terrorists, intimidate American communities from cooperating with law enforcement, and, by misusing limited antiterrorism resources, make it more likely that real terrorists will escape detection.

We have learned that the Pentagon maintains a secret database containing information on a wide cross-section of ordinary Americans. It keeps track of people like those in Vermont who planned peaceful protests of military recruiters, including one organized by Veterans for Peace. It monitored the activities of an antiwar group that met at the Quaker Meeting House in Lake Worth, FL, a year ago to plan a protest against military recruiting at local high schools.

Similarly, the FBI also engages in monitoring other ordinary, law-abiding citizens. Records show that the FBI kept information on Greenpeace, the American-Arab Anti-Discrimination Committee, and on students and peace activists who attended a conference at Stanford University in 2002. In a similar story, a student at the University of Massachusetts/Dartmouth reportedly was visited by Federal agents in October, after he requested a copy of Mao Tse-Tung's tome on Communism called, ''The Little Red Book'' through the University's interlibrary loan program. If the FBI is investigating what book a college senior is borrowing, what is it that they are not investigating that they should be?

The New York Times reports that after September 11, 2001, when former Attorney General John Ashcroft loosened restrictions on the FBI to permit it to monitor Web sites, mosques, and other public entities, ''the FBI has used that authority to investigate not only groups with suspected ties to foreign terrorists, but also protest groups suspected of having links to violent or disruptive activities.'' For example, recently disclosed agency records show that FBI counterterrorism agents have conducted surveillance and intelligence-gathering operations on groups concerning the environment, animal cruelty, and poverty relief.

Now we are learning that President Bush has, for more than 4 years, been secretly authorizing warrantless surveillance of Americans inside the United States. In fact, he acknowledges issuing secret Presidential orders to authorize such warrantless surveillance more than 30 times since September 11, 2001.

The U.S. Supreme Court has consistently held for nearly 40 years that the monitoring and recording of private conversations constitutes a ''search and seizure'' within the meaning of the fourth amendment, extending as far back as the 1967 case, Katz v. United States. It was because of concerns over unconstitutional surveillance of Americans in the 1960s and 1970s that Congress enacted the Foreign Intelligence Surveillance Act in 1978 to provide a legal mechanism for the Government to engage in searches of Americans in connection with intelligence gathering. Unless pursuant to a criminal search warrant issued by a judge on a showing of probable cause, FISA warrants are the exclusive means by which electronic surveillance and the interception of electronic communications may be undertaken pursuant to the rule of law.

The Foreign Intelligence Surveillance Act has been amended over time, and it has been adjusted several times since 9/11. Indeed, much of the PATRIOT Act includes FISA amendments. The law has been further amended since the PATRIOT Act, as well.

Congress allows the FISA Court to operate in secret and authorizes the Government to begin immediate surveillance in an emergency situation, so long as it seeks a warrant from the FISA Court within 72 hours. In addition, Congress has provided that following a declaration of war, the President may authorize electronic surveillance without a court order for a period not to exceed 15 days.

There has never been a leak reported out of the FISA Court. Furthermore, it has never been alleged that FISA's emergency procedures are inadequate or that FISA ties the hands of law enforcement. If the Bush administration believed that FISA was inadequate, it should have alerted Congress to these flaws. It did not. Instead, it worked with me and with others in the days following 9/11 to amend FISA. I chaired the Senate Judiciary Committee at that time, apparently the same time that the Bush administration began surveillance outside FISA. I was not informed of the President's secret

eavesdropping program while I chaired the Judiciary Committee in 2001 and 2002. I read about it for the first time in the press last week. Spying on Americans without safeguards to protect against the abuse of government power is unnecessary, and it is wrong.

Over the last week, we have learned of long-term, widespread eavesdropping on Americans by the Bush administration without compliance to the law, without court oversight, and without congressional authorization. Compounding that already troubling discovery were new, disturbing reports that the FBI has been monitoring U.S. advocacy groups working on behalf of the environment and civil rights issues, Quaker meetings and students checking out books to write school papers. This is all too reminiscent of the dark days when a Republican President compiled ''enemies lists'' and eavesdropped on political opponents and broke into doctors' offices and used the vast power of the executive branch to violate the constitutional rights of Americans.

I was elected to the Senate in the aftermath of Watergate and the White House plumbers and the secret wars that led to the impeachment articles being considered against President Nixon. The Foreign Intelligence Surveillance Act was passed in 1978 as part of the reform and reaction to those abuses. As I have noted, this law has been extensively updated in accordance with the Bush administration's requests in the aftermath of 9/11 and has been modified further in the last 4 years with respect to so-called lone wolf terrorists. Neither in the first year of his Presidency or in the aftermath of 9/11 or in the 4 years since enactment of the PATRIOT Act has President Bush come to Congress and asked us for authority to engage in the kind of extensive surveillance on Americans by the National Security Agency that The New York Times reported and the President has now confirmed that he secretly ordered and has reaffirmed more than 30 times.

We are a nation of laws, and the fact that no person is above the law is a bedrock principle upon which this Nation was founded and one we are defending and fighting for abroad. This type of covert spying on American citizens and targeted groups on American soil betrays that principle.

The chairman of the Judiciary Committee has the right instinct and was right to announce that we need hearings and an explanation, and the American people deserve an accounting for this troubling revelation. Earlier this week, I joined with Senators REID and ROCKEFELLER in requesting specific information from the Bush administration on its covert spying operations domestically. I cannot emphasize strongly enough how important it is for the Bush administration to cooperate with Congress on this matter. No one should be able to conduct secret, illegal spying programs on our soil with no accountability to Congress or the American people.

Congress has passed laws that established a legal way to eavesdrop on al-Qaida and other potential terrorist organizations. Internationally that monitoring should have been done more effectively before 9/11 by this administration. We have established legal authority in emergency circumstances for the Attorney General to proceed first so long as he promptly seeks court approval thereafter. We even provided a 15-day window after a declaration of war. This program has apparently been going on for not 4 days or 14 days but for more than 4 years. That is not pursuant to or consistent with FISA. In the PATRIOT Act and other actions since 9/11, Congress has created additional authorities. But it is Congress that passes laws. The President cannot simply declare when he wishes to follow the law and when he chooses not to.

What happens to the rule of law if those in power abuse it and only adhere to it selectively? What happens to our liberties when the Government decides it would rather not follow the rules designed to protect them?

The Bush administration, in secret legal justifications for a secret eavesdropping program, apparently argues that when the Congress authorized the use of force in September 2001 to attack al-Qaida in Afghanistan, it authorized warrantless searches and eavesdropping on Americans. I voted for that authorization. This program is not what I voted for. Congress did not sign a blank check. The power to eavesdrop on Americans is not even authority that the Bush administration asked for from Congress.

I was chairman of the Judiciary Committee when the President's program was undertaken, and I was never informed of the program or its purported legal justification. In this, as with its detention and interrogation practices, this administration has chosen to go it alone. That is wrong, and it is corrosive to our system of checks and balances.

This is a Government with three coequal branches. As Justice O'Connor reminded the Bush administration, even wartime does not give the President a blank check with regard to power. As I said last week, the same lawyers who advised the President that he was above the law when it came to torture, in a memorandum the Bush administration has had to disavow and withdraw when it was brought to light, have apparently advised the Bush administration that this President has authority to conduct warrantless surveillance of Americans. That is wrong. Accountability is sacrificed when there is rampant unilateralism.

No one can just ignore the law or the constitutional limits on Executive authority that protect Americans' liberties. Accordingly, I urge the Bush administration to make public its purported legal justification for what I view as an illegal program of spying on Americans without court approval. I urge them not just to recite bumper sticker slogans or conclusory statements that they view their actions as consistent with the self-serving rewriting of the law they have secretly made amongst themselves, but to provide that legal justification in the light of day so that Congress and Americans can consider it. Provide and post the legal memoranda.

Al-Qaida knows that we eavesdrop and wiretap. Whether we do so legally, whether we protect the liberties of Americans by respecting the constitutional requirements for court-issued warrants, these aspects are of little concern to terrorists but matter greatly to Americans. I expect that when the supposed legal underpinnings for the President's eavesdropping program are examined, they, too, will be withdrawn and disavowed by this administration. I also expect that they will be rejected by an honest review in Congress, in the courts, and certainly by the American people. I ask that a copy of a letter to the President of which I referred be printed in the RECORD.

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

U.S. SENATE,
*Washington, DC, December 20, 2005.*

The PRESIDENT,
*The White House,*
*Washington, DC.*

DEAR MR. PRESIDENT: Your recent acknowledgement of the existence of a highly-classified program to conduct electronic surveillance on U.S. citizens and permanent residents without obtaining a court order as required by law has raised a number of troubling issues in the minds of the American people. That is why Democrats and Republicans have called for prompt and thorough congressional investigation of this program. We write to ask that you immediately provide Congress with additional details on the extent and scope of this program, your legal justification for your actions, and your efforts to inform Congress about this program.

The relevant law governing surveillances, the Foreign Intelligence Surveillance Act of 1978 (''EISA''), could not be clearer on the need to obtain a court order for such surveillance. It also provides for emergency procedures and for authorization of electronic surveillance during a time of war, with reasonable time limits beyond which a court order must be obtained. We are deeply troubled by your assertions that the Constitution and the Authorization for Use of Military Force passed by Congress following the 9/11 attacks provide you justification for contravening a statute's clear language. In your public statements to date, you have not made a convincing legal argument for the authority to do so.

In addition, public statements by several of the handful of Members of Congress who were provided a briefing on this program indicate that insufficient information was provided to them under ground rules that did not enable Congress to conduct satisfactory oversight. There are questions whether your Administration has properly complied with the National Security Act of 1947 requirement to keep the appropriate committees of jurisdiction ''fully and currently informed of the intelligence activities of the United States.''

It is important for Congress to review these matters. We respectfully ask that you cooperate fully to provide all necessary information on all relevant aspects of this program, including presidential orders, supporting legal opinions, complete descriptions of actions taken under the program, and other information, to the appropriate oversight committees.

As Congress begins to examine this program in greater detail, it is clear Congress and the American people need immediately to understand at least four issues:

(1) Under what specific legal authorities did you authorize warrantless electronic surveillance of American citizens and permanent residents inside the United States?

(2) Given your assertion that the FISA is insufficient in providing appropriate authority and procedures to protect Americans from terrorism, what specific powers or authorities are insufficient and why, in the four years since the 9/11 attacks, has your Administration not proposed correcting modifications?

(3) You have stated that you authorized the NSA to intercept the international communications of people with known links to al Qaeda and related terrorist organizations. Have you ever authorized the interception, without a warrant, of purely domestic communications, or communications of people without known links to al Qaeda and related terrorist organizations?

(4) Could you please provide additional information on the legal and other justifications for limiting briefings on these matters to a handful of Members of Congress, as well as information on the dates, attendance, and issues discussed at these briefings, so it can be determined whether you complied with the letter and spirit of the National Security Act of 1947?

Sincerely,

HARRY REID,
*Democratic Leader.*
JOHN D. ROCKEFELLER IV,
*Vice Chairman, Select Committee on Intelligence.*
PATRICK LEAHY,
*Ranking Democrat, Committee on the Judiciary.*

Mr. BIDEN. Mr. President, according to the Book of Mark, Jesus asked this question: ''For what shall it profit a man, if he shall gain the whole world, and lose his own soul?'' Mark 8:36.

I would ask the President of the United States a similar question—what good is it to expand the power of the President, if in the process you erode the fundamental freedoms guaranteed by the U.S. Constitution?

Last week, we learnd—from a New York Times report and then from President Bush himself—that since September 11, 2001, the President of the United States has authorized the National Security Agency to conduct electronic surveillance of American citizens on American soil without resort to the procedures of the Foreign Intelligence Surveillance Act.

Today we learn, contrary to assurances by administration officials, that the NSA has also conducted warrantless surveillance of purely domestic phone calls because of the technical difficulties of determining the physical location of a particular telephone.

There is still much that we do not know about this secret program and much that we do not know about the purported legal basis for it. In briefing the press on Tuesday, the Attorney General noted that people criticizing the administration are proffering opinions based on ''very limited information,'' and that such critics ''probably don't have the information about our legal analysis.''

But we do know this: for the past 4 years, the Bush administration has aggressively sought to expand the power of the President beyond recognition. In the face of this campaign, a Republican Congress has largely stood idle, reluctant to exercise its constitutional duty of oversight.

The Framers provided for a system of checks and balances in the Constitution for one simple reason: to protect against abuse of power by any branch of government in order to protect our personal freedoms.

In its zeal to expand the power of the President, the Bush administration's actions have threatened the fabric of the Constitution. These are hardly the actions of a self-described conservative who professes to want to reduce the power of the National Government.

It would be one thing if the President's actions to expand Presidential power reflected sound judgment and wisdom. But again and again, the President's overreaching in the name of security has been profoundly misguided, and has undermined support for the war against al-Qaida at home and abroad; in his decision to create special military tribunals for al-Qaida suspects held in Guantanamo Bay, a system that has yet to produce a complete trial, in his decision to authorize secret prisons abroad holding terrorist suspects—including, apparently, using facilities once operated by Soviet Intelligence agencies; in his decision to play fast and loose with time-tested standards against torture; and now in his decision to unilaterally authorize secret wiretaps of Americans without a court order.

Without more information from the Executive, it is difficult to judge the legality of the President's secret spying program. I call on the Attorney General, therefore, to provide the necessary information by promptly releasing the legal opinions governing this program—so that the Congress and the American people can assess the propriety of the President's actions. And I call on the Director of National Intelligence to promptly provide full and complete briefings to the appropriate congressional committees on the scope and operation of this program.

What is clear today is that the President of the United States decided to create a new system outside the framework of the Foreign Intelligence Surveillance Act of 1978—a framework that Congress designed to be comprehensive for electronic surveillance of foreign powers and agents of foreign powers. It is this framework on which I will focus my remarks today.

The Foreign Intelligence Surveillance Act, or FISA, was enacted in 1978 after a 3-year effort to do so.

As stated in the report of the Senate Select Committee on Intelligence, the purpose of the law was to provide regulation for ''all electronic surveillance conducted within the United States for foreign intelligence purposes'' in order to provide a check against abuses that had been revealed by the investigation of the Church Committee.

The bill was a bipartisan product; in the Senate, the original version introduced in 1977 that served as the basis of the 1978 law was sponsored by Senators across the ideological spectrum—including Birch Bayh, TED KENNEDY, Mac Mathias, James Eastland, and Strom Thurmond. The Senate ultimately adopted the bill on April 20, 1978, by a strong, bipartisan vote of 95 to 1. At the time the bill was approved in the Senate, I stated that it ''was a reaffirmation of the principle that it is possible to protect national security and at the same time the Bill of Rights.'' I was also a member of the conference committee that produced the final version of the law that was enacted with broad support in October 1978.

Here is what we did in 1978. FISA was designed to govern our collection of ''foreign intelligence.'' Typically, in the criminal context, search warrants can only be issued if the Government can demonstrate to a neutral judge that probable cause exists to believe a crime has been committed.

Under FISA, surveillance orders are issued so long as probable cause exists that someone is an ''agent of a foreign power.'' That term has been expanded in the last year to even include a lone wolf terrorist; in other words, someone not affiliated with a known terrorist organization.

Not only is the standard different under FISA, but the FISA process is done in secret, with a special court known as the Foreign Intelligence Surveillance Court. This is a court made up of Federal judges who sit on U.S. district courts. I should parenthetically note that we learned today that one of the 11 judges on this court just resigned in reaction to President Bush's unilateral domestic spying program.

When we wrote FISA, we knew there could be times when the President would have to act quickly. We knew there would be times when probable cause would have to be demonstrated to the FISA court after the surveillance began. We contemplated emergencies and wrote the law so that it could deal with them.

First, we addressed emergency situations in section 105(f) of the act, which provides that if the Attorney General reasonably determines that an emergency situation exists—and that his investigators need to target a wiretap against an agent before an application can be made to the FISA Court—he may do so for 72 hours. The original act provided for only a 24-hour emergency

period, but Congress expanded that period to 72 hours in December 2001—after the attacks on 9/11. Similarly, in enacting the Patriot Act in 2001, Congress provided other changes to FISA.

It is therefore difficult to accept the contention of the Attorney General that Congress has been unwilling to help the President meet the challenges we now face.

The law is clear on the steps the Attorney General needs to take to wiretap suspects without first obtaining a warrant: he must tell a FISA Court judge at the time of the authorization that he has taken such emergency measures, and he has to apply for post-hoc approval as soon as is practicable but not later than 72 hours after the surveillance has commenced.

We envisioned another emergency that could authorize warrantless intelligence searches: a declaration of war. Section 111 lets the Attorney General authorize electronic surveillance without a court order to acquire foreign intelligence information for up to 15 calendar days following a declaration of war by Congress. Although the ''Authorization for the Use of Military Force'' approved just after 9/11 was not, technically speaking, a declaration of war, it was the constitutional equivalent under the war clause to permit the use of force in Afghanistan, and the President would have been justified to exercise these extraordinary surveillance powers in the first 2 weeks after enactment of the joint resolution.

It is also important to note that FISA, on its own terms, set up a comprehensive and exclusive system for domestic wiretapping. Section 2511(2)(f) of Title 18, United States Code, states that FISA, when combined with wiretap authority for domestic criminal investigations, is the ''exclusive means by which . . . the interception of domestic wire, oral and electronic communications may be conducted.''

That is why George Will recently had this to say about the administration's tortured legal reasoning, ''The President's authorization of domestic surveillance by the National Security Agency contravened a statute's clear language.''

It is also worth looking at how the FISA system has operated throughout its 27 years of existence. I would submit that it has served us well.

To those who would say it is too restrictive on our ability to gain intelligence, I would respond that the FISA Court has only rejected 5 applications out of approximately 19,000.

To those who would say that the system is too lenient, I would respond that the important piece of the equation with FISA is that it has some independent review of the executive branch—in this instance, by an independent Article III judge.

And yet, even with a history of a FISA court that approves the overwhelming majority of applications, and even with the two emergency exceptions, there are some who still argue that the administration needs additional flexibility.

For example, there are some who would say that FISA wouldn't allow us to tap the phone numbers found in the cell phone of a top al-Qaida target. With all due respect, a phone number found in a top al-Qaida operative's cell phone would seem to me to comfortably satisfy the ''probable cause'' standard outlined above. And if there were an urgent need to tap these phone numbers promptly—as I am sure there would be—no one has explained why this couldn't be done under the 72-hour emergency exception.

Rather, we have the disturbing spectacle of the Deputy Director of National Intelligence, General Hayden, complaining that ''FISA involves marshaling arguments . . . FISA involves looping paperwork around.''

Exactly right. FISA isn't a high hurdle—but it does require the executive branch to justify the extraordinary surveillance of American citizens to a judicial officer. Isn't this the rule of law that we are fighting to defend? And when FISA has needed updating over its 27-year existence, Congress has, time and time again, stepped up to the plate.

When we first enacted FISA, its scope was limited to wiretapping and other electronic eavesdropping. It has since been amended to authorize pen/trap orders and business record orders; in reaction to the Zacarias Moussaoui case, Congress created the so-called ''lone wolf'' provision; after 9/11, we extended the emergency period from 24 to 72 hours; and the list goes on and on.

If additional changes need to be made to FISA, this Senator stands ready and willing to engage in that exercise.

The alternative is the course on which the President has embarked, directly contravening a specific statute and relying on a dangerously expansive view of his Commander in Chief authority—a view that would potentially expose thousands of Americans who make a phone call abroad to surveillance of this sort. This is a course that we tried to avoid when we drafted the FISA Act in the first place. As I said in 1978 when FISA was originally passed, ''it is not necessary to compromise civil liberties in the name of national security.'' I hope the lessons from 1978 and the real story about what FISA allows can inform the debate going on today.

This debate is just beginning. Congress must stand up to this Presidential overreaching, examine what occurred, and provide corrective action. Senator SPECTER, the Chairman of the Judiciary Committee, has promised to hold hearings on this matter. I commend him for that.

But we will need the full cooperation of the Executive in this undertaking, and the administration can start by coming clean with the full legal reasoning for the President's domestic spying program.

There will be much more to say—and learn—in the second session of the 109th Congress. The executive branch's program must be subjected to close scrutiny by this Congress to ensure that in pursuit of terrorists or suspected terrorists, we are not sacrificing essential freedoms that we hold dear.

Mr. LEVIN. Mr. President, more than 50 years ago, Justice Robert Jackson said:

> With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.

I am deeply troubled by recent revelations that the President of the United States has apparently personally authorized spying on the private phone conversations of Americans without court approval, as is required by law. The President's decision to ignore the law Congress wrote and bypass the special court we created raises profound concerns that deserve our immediate attention.

Yesterday, I joined several of my colleagues in requesting a joint inquiry into the President's actions by the Senate Intelligence and Judiciary Committees.

Checks and balances are the bedrock of our system of government. In 1978, when Congress passed the Foreign Intelligence Surveillance Act to permit the Government to seek court orders to tap the phones of people in the United States, Congress put in the law a check—the FISA Court—on the executive branch's authority.

Since 1979 the FISA Court has approved nearly 19,000 applications for FISA wiretaps. The Court has rejected only a handful.

Last year, at a speech in Buffalo, NY, the President explicitly cited the need for a court order as a reason why Americans should have confidence that their civil liberties are being protected. He said:

> Any time you hear the United States government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so. It's important for our fellow citizens to understand . . . constitutional guarantees are in place when it comes to doing what is necessary to protect our homeland, because we value the Constitution.

But now the President acknowledges that 4 years ago, he authorized wiretaps on Americans without court review. Now he asserts that he has the authority—without court approval—to order the wiretaps himself and we now know that the Government was conducting warrantless wiretaps when the President made the statement in Buffalo.

If the court isn't consulted, where is the check on executive power?

The President has said that he consults with executive branch lawyers and has briefed Congressional leaders about the domestic spying program. But to suggest that consulting with executive branch lawyers is a check on

Executive Branch authority demonstrates a fundamental misunderstanding of the concept of checks and balances. And notifying a few members of Congress—if that is in fact what the administration did—is not the check provided by law. That check is the court.

In the conference report that accompanied the FISA law, Congress made the Supreme Court the only body that could authorize electronic surveillance by the executive branch not explicitly authorized by the FISA law. The conference report said:

> The conferees agree that the establishment by this act of exclusive means by which the President may conduct electronic surveillance does not foreclose a different decision by the Supreme Court . . .

Executive Order 12333, issued by President Reagan in 1981, recognizes FISA as the governing law for foreign intelligence wiretaps. It provides that:

> Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

And, under FISA itself, a person is actually guilty of a crime if he engages in electronic surveillance except as authorized by statute.

> A person is guilty of an offense if he intentionally—(1) engages in electronic surveillance under color of law except as authorized by statute.

The President has not provided any legal opinion that supports his claim of authority.

On Monday, the President said that the targets of the spying are ''those that are known al Qaeda ties and/or affiliates.'' But the FISA law says that wiretap orders may be issued by the court if there is probable cause to believe that the target of the wiretap is a foreign power or an agent of a foreign power. If the targets of the spying have known al Qaeda ties, why didn't he get a FISA court order?

The President has also tried to justify the warrantless spying by saying ''Sometimes we have to move very, very quickly.'' That is true. In some cases we do have to move quickly. But the FISA law addresses such occasions. It explicitly allows the Attorney General, to issue emergency wiretap orders without first obtaining court approval. His wiretap application need only be filed with the FISA court within 72 hours after surveillance is authorized.

The President claims that he has authority under the Constitution to authorize wiretaps without court approval as required by law. Yet he refuses to provide any legal opinions justifying that view.

The Attorney General is quoted in the Washington Post as saying ''This is not a backdoor approach . . . We believe Congress has authorized this kind of surveillance'' and he points to the Authorization for Use of Military Force passed by Congress in September 2001 as a source of Congressional authorization.

That Resolution states:

> That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

The assertion that ''necessary and appropriate force'' includes the authority to wiretap American citizens in the United States, is, on its face, without merit. And again, the President has not provided any legal opinion that would support that interpretation.

The Attorney General undermined his own statement that the Congress authorized warrantless wiretaps by telling the Post that the President had contemplated asking Congress to pass legislation granting him that authority but decided against it because it ''would be difficult, if not impossible'' to pass. Taken together, the two statements of the Attorney General make no sense. He asserts both that Congress authorized the wiretapping and that it never would. The Attorney General is trying to have it both ways. We need some straight answers.

So, why wasn't the FISA law followed?

Just this morning, the Washington Post reported that General Michael Hayden the head of the National Security Agency—the agency the President has charged with carrying out the spying—suggested that getting retroactive court approval is inefficient because it ''involves marshaling arguments'' and ''looping paperwork around.''

I would remind General Hayden—and the President for that matter—of something else Justice Jackson said. He said:

> The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power.

Just as troubling as General Hayden's reason for bypassing FISA is the Post's report that the decision to tap a phone without a warrant ''requires only the approval of a shift supervisor.''

That is outrageous. We don't let shift supervisors at the airport decide to stop screening passengers for explosives. And we shouldn't let shift supervisors at the NSA decide whether to abide by the law or not.

The President says that this is a different era and a different type of war. And he is right. But this is the same country, with the same Constitution, and the same system of checks and balances that have served us so well for more than 200 years. And even Presidents are not above the law.

Mr. DODD. Mr. President, I rise to speak on the PATRIOT Act Reauthorization conference report.

I voted for the original legislation in 2001. Along with 98 of my colleagues, I supported that bill because I decided that on balance, the PATRIOT Act it would enhance our Nation's ability to fight terrorism without substantially encroaching on our citizens' civil liberties. At the same time, I and many of our colleagues understood that aspects of the law should be revisited. For that reason, a number of provisions were set to sunset on December 31, 2005. After careful, bipartisan review of these provisions, it became evidence to many of us that certain improvements are necessary to maintain the balance between fighting terrorism and protecting civil liberties. For that reason, I joined with a bipartisan group of Senators to cosponsor the SAFE Act, which would have modestly reformed the 2001 PATRIOT Act to provide procedural safeguards and increase judicial review.

In July of this year, the Senate unanimously passed a PATRIOT Act reauthorization bill. While that bill was not perfect, it took significant steps to fix shortcomings in the current law and strength our Nation's ability to fight terrorism while still protecting the civil liberties that are the cornerstone of a free and secure democratic society. The House also passed a reauthorization bill, which did not come as close to reaching this goal. Conferees were appointed to work out a compromise.

Prior to the Thanksgiving recess, a draft PATRIOT Act reauthorization conference report was circulated by conferees. At the urging of several Senators, Senator SPECTER and others took the conference report back to the conferees to try to negotiate additional modifications. They are to be commended for their efforts to reach a compromise that would earn broad bipartisan support.

When the conference was concluded, a number of our colleagues, including Senators LEAHY, KENNEDY, ROCKEFELLER, and LEVIN declined to sign the conference report due to their exclusion from key negotiations and their conclusion that the conference report failed to sufficiently meet the dual objective of combating terrorism and defending freedoms.

While I believe that the conference report is an improvement over current law, the provisions related to section 215, national security letters, and roving wiretaps have still given me pause. First, under section 215, also called the business records provision, current law allows the Justice Department to obtain medical records, business records, library records, or other tangible items of individuals by merely showing that the items are relevant to a terrorism investigation. The unanimously agreed upon Senate bill requires that the Government show that a person whose records are sought have some connection to a suspected terrorist or spy organization. Unfortunately, the conference report differs from the Senate version as it maintains the minimal standard of relevance without a requirement of fact connecting the

records sought, or the individual, suspected of terrorist activity. Additionally, the conference report does not impose any limit on the breadth of the records that can be requested or how long those records can be kept by the Government.

Under the current PATRIOT Act, an individual who receives a section 215 order to turn over business records is prohibited from telling anyone about the order. This is referred to as a ''gag order.'' The conference report is an improvement over current law as it explicitly grants the right for a suspect to consult with an attorney regarding this ''gag order'' but unlike the Senate version, the conference report also requires an individual who receives a Section 215 order to notify the FBI if he consults with an attorney and to identify the attorney.

Second, under current law, the FBI can issue a national security letter—''NSL''—without the approval of a judge, grand jury, or prosecutor, to obtain certain types of sensitive information about innocent individuals. Similar to a 215 order, the targeted individual is restricted by a gag order. While the conference report does provide the right to challenge the NSL demand, it also requires the court to accept as conclusive the Government's assertion that a gag order should not be lifted, unless the court determines the Government is acting in bad faith.

I also find it troubling that the conference report would give the Government the authority to keep all evidence secret from an individual who is challenging a 215 order or an NSL order. For example, if an attorney wants to challenge an order to turn over the business records of a client on the grounds of attorney/client privilege, they would not be allowed to see the evidence the Government had requested or the reasoning behind the request. It is also important to note that the recipient of a Section 215 ''business records'' order or an NSL order is usually not the subject of investigation. For example, a doctor could receive a Section 215 order from law enforcement to reveal the medical records of a patient. Under this conference report, that patient would not even receive notice that the Government had obtained his personal information and would never have the opportunity to challenge the use of that information in a trial.

Third, I would like to address ''roving wiretaps.'' A ''roving wiretap'' is a tap on any telephone that a suspect uses, moving from one telephone to another, with no particular locational target. Under the PATRIOT Act, the FBI is authorized to engage in roving wiretaps without court approval. The Senate bill mandated that a roving wiretap include sufficient information to describe the specific person to be wiretapped with ''particularity.'' ''Particularity'' is a legal term of art describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. The conference report does not include that requirement and it does not require the Government to determine whether the target of a roving intelligence wiretap is present before beginning surveillance. Without this level of specification it is easy to see how roving wiretaps could be abused to secretly record the conversations of Americans without their knowledge or consent.

However, I would also like to note that the conference report is an improvement over current law as it includes a number of comprehensive public reporting and auditing requirements which would help prevent abuse of section 215 orders and to help preserve civil liberties. Additionally, the conference report also maintains provisions from the Senate bill that address the shortcomings of current law, including expressly permitting the recipient of the national security letter or a section 215 order to consult with an attorney, requiring the Government to notify a target of a warrantless search within a set number of days, and limiting the use of roving wiretaps to those cases in which the FBI includes a ''specific'' description of the target and ''specific facts in the application'' that show the target's actions may thwart conventional surveillance efforts.

The PATRIOT Act Reauthorization conference report passed the House by a vote to 251–174 on December 14 and was brought to the Senate floor for debate. On December 16, Senator FRIST attempted to invoke cloture to bring this body to a vote on the conference report. Cloture was not invoked. I was necessarily absent from the Senate for health reasons.

Since then I have joined 47 of my colleagues in cosponsoring S. 2082. The bipartisan legislation, introduced by Senators SUNUNU and LEAHY, would provide a 3-month extension of the expiring provisions of the PATRIOT Act. Unfortunately, Senator FRIST has said he will not permit a vote on it; the House leadership has said they will not bring it to the floor for a vote; and the Bush administration has stated that, even if the extension were to pass both the House and the Senate, President Bush would refuse to sign it. My fellow colleagues have asked this body more than a half dozen times to allow this 3-month extension to come to the floor. They have been denied this opportunity. This is playing politics with an extremely important law that protects our citizens from terrorism.

Earlier this week, the President, in speaking of the PATRIOT Act, said, ''in a war on terror, we cannot afford to be without this law for a single moment.'' I agree with his statement. That is why there is no reason why the President and those on the other side of the aisle should refuse to extend this important law. This is why I remain hopeful that the majority leader will set aside politics and allow this extension to occur. Law enforcement officials should not be without these important tools to fight terrorism for even a single moment. We would then have the opportunity to return after the holidays to address these areas of concern and hopefully pass a bipartisan bill that would enhance our ability to fight terrorism without substantially encroaching on our civil liberties.

The PRESIDING OFFICER. Under the previous order, the bill is read a third time and passed, and the motion to reconsider is laid upon the table.

The bill (S. 2167) was read a third time and passed, as follows:

S. 2167

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

**SECTION 1. EXTENSION OF SUNSET OF CERTAIN PROVISIONS OF THE USA PATRIOT ACT AND THE LONE WOLF PROVISION OF THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.**

Section 224(a) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (18 U.S.C. 2510 note) is amended by striking ''December 31, 2005'' and inserting ''July 1, 2006''.

## MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION—CONFERENCE REPORT—Resumed

Mr. MCCONNELL. Mr. President, notwithstanding the previous order, I ask unanimous consent that the Senate proceed to the consideration of the conference report to accompany H.R. 3010, that the conference report be agreed to, and the motion to reconsider be laid upon the table.

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

The legislative clerk read as follows:

A conference report to accompany H.R. 3010 making appropriations for Departments of Labor, Health and Human Services and Education, and for other purposes.

There being no objection, the Senate proceeded to consider the conference report.

Mr. KYL. Mr. President, I rise today to call attention to a provision contained in the conference report to H.R. 3010, the fiscal year 2006 appropriations bill for Departments of Labor, HHS, and Education. I am pleased to see that House and Senate conferees were able to provide $100 million for the Teacher Incentive Fund. The Teacher Incentive Fund was first proposed in the President's fiscal year 2006 budget, and will offer an appropriate incentive to States and local education agencies to advance the goals of the No Child Left Behind Act.

The No Child Left Behind Act, enacted 4 years ago, raised expectations for students and teachers. Students are expected to raise their achievement level, and teachers are accountable for reaching the specific goals. The Teacher Incentive Fund is an appropriate follow up to the No Child Left Behind

Act. It is a pilot program for States and school districts to provide additional compensation to teachers who make a measurable impact on raising student achievement. Under this incentive program, Federal funds would be available to States and local school districts for the purpose of developing new compensation systems to reward teachers who raise achievement and to provide an incentive to attract effective teachers to what the Department of Education calls high-need schools. These are schools with high poverty rates and poor performance on State assessments. The Teacher Incentive Fund provides States and school districts with another tool to raise teacher quality and, thus, close the achievement gap, which, of course is the primary goal of the No Child Left Behind Act.

In October, the Senate Republican Policy Committee, of which I am the chairman, released a policy paper in support of merit pay for teachers in general and the Teacher Incentive Fund specifically. The paper, titled ''Teachers Are Key to Success of 'No Child Left Behind' Act: Better Pay for Better Teaching,'' discusses research in support of merit pay for teachers, and the success merit pay programs have achieved.

Mr. President, I ask unanimous consent that this paper be printed in the RECORD following my remarks.

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

TEACHERS ARE KEY TO SUCCESS OF 'NO CHILD LEFT BEHIND' ACT: BETTER PAY FOR BETTER TEACHING

INTRODUCTION

Enacted four years ago, the No Child Left Behind (NCLB) Act raised expectations for students and teachers. Students are expected to raise their achievement level, and teachers are accountable for reaching the specific goals. As such, it is appropriate to reward and acknowledge those teachers who, by working harder and smarter, have achieved measurable success in their classrooms.

President Bush has proposed a pilot program for states and school districts to provide additional compensation to teachers who make a measurable impact on raising student achievement. Under this incentive program, federal funds would be available for the purpose of developing new compensation systems to reward teachers who raise achievement, and to provide an incentive to attract effective teachers to what the Department of Education calls ''high-need'' schools, which are schools with high poverty rates and poor performance on state assessments.

In response to the President's proposal, the House of Representatives included an incentive pay program for teachers in its Fiscal Year 2006 appropriations bill that funds the Department of Education (H.R. 3010). The House-passed program, like the one proposed by the President, is a voluntary pilot program available to interested states and school districts. The Senate-reported bill does not contain such a provision.

Some observers may be concerned that using federal dollars for anything related to teacher pay is an inappropriate intrusion of the federal government into an area that is historically the jurisdiction of states and local school districts. However, supporters of this concept view it in the context of a natural follow-up to the four-year-old NCLB. That law placed new accountability requirements upon schools; thus, it is argued, it is now appropriate for the federal government to make available financial incentives for teachers who help meet those requirements. The concept of the President's proposal and the House plan is to provide states and school districts with another tool to raise teacher quality and close the achievement gap, which stand as the foundation of NCLB.

According to a November 2004 national survey, 80 percent of the public supports salary increases for teachers who raise student achievement. However, some observers suggest that teachers' unions oppose anything that might be construed as merit pay. At least one observer notes that union opposition stands in the way of local districts implementing merit pay systems on a larger scale. For example, in California, in response to Governor Schwarzenegger's proposal to introduce merit pay for teachers, the state's largest teachers' union sought to impose a dues hike on its members to help raise ''tens of millions of dollars'' to combat merit pay and other budget initiatives. A federal pilot program, such as the one proposed by the President, may be necessary to allow public schools to overcome teachers' unions' opposition to implementing a compensation program that links teacher performance and student outcomes. The pilot program would provide funds directly to state and local educational agencies to allow this concept—one that has already proven successful in other schools—the chance to prove itself and build support within the community. This was the case in Little Rock, Arkansas. Merit-pay bonuses were paid in the first year by an anonymous donor; the next year, the school district, pleased with the results of the first year, voted to use its own funds to pay performance bonuses.

BACKGROUND: AN ANTIQUATED PAY SYSTEM

Today, the majority of teachers in the United States are compensated through a ''single salary schedule,'' which bases teachers' pay on their years of experience and their education credits and degrees. According to the National Center for Education Statistics, 96 percent of all public school districts utilize a single-salary schedule for teacher pay. The system was designed in the 1920s to ensure fairness among elementary school teachers, who were mostly women, and secondary teachers, who were mostly men. Critics contend that this pay system fails teachers and students as it does nothing to reward excellence. Indeed, it promotes equal pay for unequal performance. Under the current system, an increase for one teacher means an increase for all. The following table shows the Denver Public Schools' salary schedule as offered by Brad Jupp, education author and member of the Denver Classroom Teachers Association. According to Jupp, it is an example of a ''typical single-salary schedule'' used for paying teachers.

FIGURE 1.—DENVER'S SALARY SCHEDULE [1]

| | B.A. | M.A. | Doctorate |
|---|---|---|---|
| New Hire | $31,320 | $31,779 | |
| Step 1 | 32,971 | 33,454 | $39,169 |
| Step 2 | 33,073 | 33,697 | 40,903 |
| Step 3 | 33,225 | 35,101 | 42,642 |
| Step 4 | 33,480 | 36,503 | 44,377 |
| Step 5 | 33,785 | 38,053 | 46,251 |
| Step 6 | 33,988 | 39,671 | 48,219 |
| Step 7 | 35,421 | 41,337 | 50,290 |
| Step 8 | 36,912 | 43,087 | 52,449 |
| Step 9 | 38,456 | 44,924 | 54,702 |
| Step 10 | 40,092 | 46,860 | 57,057 |
| Step 11 | 41,784 | 48,843 | 59,521 |
| Step 12 | 43,566 | 50,944 | 62,082 |
| Step 13 | 45,546 | 53,401 | 64,919 |

[1] With relatively low starting salaries and guaranteed raises over time, the current Denver Public Schools salary schedule is typical of compensation schemes for teachers. Each step represents a year of teaching.
Source: Denver Public Schools.

Proponents of changing teacher compensation argue that the single-salary schedule deprives public school administrators of the ability to adjust an individual teacher's pay to reflect performance, attract sought-after skills, and assure that teaching positions in low-income schools are filled by high performers. For example, many school systems struggle to fill teaching positions in fields that command high salaries outside of education, such as math and science. The rigidity of the single-salary schedule prevents them from addressing this shortage in the obvious way—by raising pay in these specialties. Likewise, few school systems provide extra compensation to teachers who work with disadvantaged students. Therefore, experienced teachers often use their seniority to transfer to more attractive schools, leaving the neediest students with more inexperienced teachers.

With such obvious flaws in this rigid pay system, why don't states and local school districts reform their pay practices for teachers? The short answer is teachers' unions. Unions defend the single-salary schedule in the name of employee equity and fairness, and oppose changes that rely on student performance as a measure of a teacher's effectiveness. Furthermore, teachers' unions, particularly the National Education Association, have opposed merit pay systems because they place the union in an awkward position: ''For every teacher awarded merit pay, ten others will want the union to file a grievance alleging that they deserved merit pay more than the teacher who received it.''

WHY MERIT PAY ENHANCES NCLB GOALS

The No Child Left Behind Act requires that all students become proficient in reading and math, and that the achievement gap between students of different socio-economic backgrounds be closed. Schools that do not make progress must provide supplemental services,

such as free tutoring, and/or offering the option of choosing another public school. They must also take corrective action with regard to the way the school is run. The law, recognizing that high-quality, effective teachers are a necessary component to obtaining these results, established certain teacher-quality requirements for states, including the requirement that core academic subjects be taught by ''highly qualified teachers.'' And while federal funds already are in place for professional training and development to help states and school districts meet this requirement, that program alone may be insufficient. The General Accounting Office (GAO) reported in 2003 that state and district officials are hindered in their ability to obtain all highly qualified teachers for a number of reasons, including ''the lack of incentive pay programs.''

In keeping with the rationale that teachers are the key to the success of NCLB's goals, and so should be rewarded for meeting them, the President proposed a $500 million Teacher Incentive Fund as part of his FY 2006 budget request. This formula grant program is for states and school districts that choose to reward effective teachers—those who are closing the achievement gap for students in schools most in need, and those who otherwise are meeting NCLB annual targets for student achievement. Under the President's proposal, states would be authorized to create a statewide system to reward these teachers, and to provide grant money to local school districts in order to recruit highly qualified teachers to high-need schools. Additionally, the President requested that a portion of the funds be used for competitive grants for the development and implementation of performance-based teacher compensation systems in order to aid school districts that choose to change to such a system.

H.R. 3010, the House-passed Fiscal Year 2006 appropriations bill for the Departments of Labor, Health and Human Services, and Education, and Related Agencies, included $100 million for a pilot Teacher Incentive Fund program available to states willing to develop and implement innovative ways to provide financial incentives for teachers (and also principals) who raise student achievement and close the achievement gap. In the interest of ensuring that the states remain in control of this issue—and are committed to it—the bill requires states and schools to pay for an increasing share of the total cost of the project in subsequent years with non-federal funds. And, in order to assure that workable plans can be implemented elsewhere, the bill requires the Department of Education to assess each project through an independent evaluator, and then share these assessments with other interested parties.

It is important to note that the proposals of both the President and the House allow state and local schools a great deal of latitude in how they develop merit pay plans. For example, they may include additional measures and goals, combined with student performance, but the fundamental shift would be that the merit pay systems consider outputs, such as student achievement, rather than only inputs, such as the number of courses a teacher takes.

The provisions in the House funding bill were applauded by the chairman of the Department of Education's authorizing committee who noted, ''The federal government is spending tens of billions of dollars a year on K–12 education programs. States and schools ought to be allowed to use at least a fraction of that money to provide financial rewards for highly qualified teachers and principals who are working successfully to raise student achievement.'' Chairman John Boehner (R–OH) also noted that the funds provided in the House bill are not new, but are being diverted from existing funds that were used for what he termed ''less effective programs.'' Meanwhile, the Senate-reported appropriations bill that funds the Department of Education (as reported on July 14), does not include a similar provision.

MERIT PAY IS SOUNDLY SUPPORTED

Support for the use of merit pay in public education has not been limited to one political party. In addition to the support of the President and House Republicans noted above, the 2004 Democratic Presidential candidate, John Kerry (D–MA), voiced his support. In his policy plan, ''A Great Teacher for Every Child,'' the candidate stated that ''teachers should be rewarded for demonstrating more skill or better results.''

Another Democratic advocate is former Clinton Administration official Joel Klein, now Chancellor of the New York City public schools. According to Chancellor Klein, ''Our system is built on principles of non-meritocracy and non-differentiation, and those two principles are killing us. At the heart of the problem are the three pillars of civil service: lock-step pay, seniority, and life tenure. Together, they act as handcuffs and prevent us from making the changes that will encourage excellence in our system.''

In addition to the bipartisan support it has garnered from elected officials, merit pay for educators is supported by teachers, parents, and education researchers. In November 2004, two national surveys were conducted for The Teaching Commission, a private panelled by former IBM chairman Louis Gerstner, Jr. The surveys found that 80 percent of those surveyed support salary increases for ''teachers who improve student achievement, raise teaching standards and increase accountability for teachers.'' The surveys also found that three out of four surveyed support paying higher salaries to teachers willing to serve in high-poverty schools that struggle to attract and retain good teachers. Furthermore, a 2003 survey conducted by the research group Public Agenda found that 85 percent of teachers and 72 percent of principals reported that providing financial incentives would ''help a lot'' when it comes to attracting and retaining quality teachers. Similarly, 72 percent of the public supported paying more for those who teach in subjects such as math, science, and special education in order to attract teachers with knowledge in these subjects.

REASONS TO SUPPORT MERIT PAY FOR TEACHERS: MERIT PAY HAS PROVEN RESULTS

A number of school districts have explored merit pay as a means to attract, motivate, and retain high-quality teachers. Below are examples of merit pay systems that proponents point to as promising models.

Starting in 1999, the Denver Classroom Teachers Association and the Denver Public Schools agreed to study the relationship between student achievement and teacher compensation. The initial study included a pilot project at 16 schools for four years. As a result of the initial pilot program, it was determined that teacher compensation ''could not be based on student achievement alone.'' Therefore, the district and the teacher association formed a task force to design a new comprehensive pay system for teachers. The task force of teachers, school administrators, and local citizens used private funds to develop a system dubbed ''ProComp,'' which linked teacher pay to the school district's instructional mission.

Denver's ProComp system has four components that allow teachers to earn additional pay. The first component is ''knowledge and skill,'' which allows teachers to earn additional compensation by completing annual training. The second component is ''professional evaluation,'' which allows salary increases based on evaluation. The third, ''student growth,'' rewards teachers based on the academic achievement of their students. And the fourth is ''market incentives,'' which allows the district to offer additional pay for difficult-to-fill positions.

The Denver Board of Education and the teachers' association approved ProComp in 2004. Next, the program will be submitted to Denver voters later this year in order to raise the $25 million needed to finance the system.

A second program proving successful is in Chattanooga, Tennessee. In 2001, nine of Tennessee's twenty worst performing schools were located in Chattanooga. The mayor and the school district, with cooperation from the teacher association (with funds provided by two private foundations), devised a plan to address these nine elementary schools, known as the ''Benwood schools.'' To attract highly qualified teachers to teach in the Benwood schools, the group developed a teacher-incentive package. The package included a $5,000 bonus for highly-qualified teachers as defined by student achievement, and a $2,000 annual bonus for every teacher in a school that significantly increased its test scores, among other incentives.

The ''Benwood schools'' results are impressive. The percentage of third graders reading at or above grade level rose from 23 percent in 2001 to 36 percent in 2003. Across all grades, the percentage of students at or above grade level in reading/language arts rose from 57 percent in 2003 to 77 percent in 2005. Math achievement increased from 54 percent to 70 percent during the same period. In addition to raising student achievement, the Benwood schools report that filling their teacher positions has been easier, turnover has been reduced, and teacher morale has improved.

MERIT PAY HELPS WITH DIFFICULT-TO-FILL POSITIONS

The success of the NCLB depends particularly on raising achievement at high-needs schools, but, as Secretary of Education Margaret Spellings describes it, the current system detracts from that goal: ''We have a system that doesn't give the teachers who want to help these students the support they deserve. While most professions reward those willing to take on the hardest assignments, the public school system often does the opposite. Teachers with the skill and desire to close the achievement gap find themselves drawn away from the schools that need the most help. Many school systems even offer de facto incentives for teachers to leave these schools.'' That is, sometimes experienced teachers use their seniority to transfer to more desirable schools.

To address this, a number of school districts have employed merit pay to reward highly qualified teachers who work in designated high-poverty schools. One such program is the Teacher Advancement Program (TAP) developed by the Milken Family Foundation. In addition to merit pay, the TAP system rewards teachers who take on additional responsibilities with additional pay. In Arizona, talented teachers have shown their support for this program by taking jobs at some high-need schools. Of the 61 teachers in one school district who moved to high-need schools, 13 (or 21 percent) came from schools in high socioeconomic areas, schools that are ''among the best in the area.'' Additionally, school districts in Florida, Alabama, Maryland, and Tennessee are offering rewards to qualified teachers who work in designated high-poverty schools. According to the superintendent of one such school district, since the initiative began,

''staffing the urban schools has become much easier.''

MERIT PAY RAISES TEACHER OUALITY AND TREATS TEACHERS AS PROFESSIONALS

Education research demonstrates that teacher quality is the single most important factor affecting student achievement. That said, one recent study documents a decline in teacher quality—which its authors attribute to lack of financial reward for quality work. Economists Carline Hoxby of Harvard University and Andrew Leigh of Australian National University found that salary distribution for U.S. public school teachers ''has narrowed so dramatically that those with the highest aptitude can expect to earn no more than those with the lowest. This alone accounts for more than three-quarters of the decline in teacher quality.'' According to their research (which used mean SAT scores to define ''aptitude'' and was limited to women), 16 percent of American female teachers in 1963 were of low aptitude, compared to 36 percent in 2000. At the other end the spectrum, only one percent of female teachers in 2000 were high-aptitude, compared to five percent in 1963.

This study underscores the assertion that, especially in this highly competitive economy, the single-salary schedule that bases compensation solely on college credits, education degrees, and years of experience does not attract the best and brightest. Highly capable and competent people are more likely to be attracted to a system that rewards individual performance.

Teaching is a profession like none other. It is responsible for educating, training, and preparing all others with the skills needed to succeed. As such, it should be held to high standards. Merit pay allows top teachers to be acknowledged for their efforts, provides an incentive to other teachers, and raises the bar of professionalism in teaching. It allows teachers to be held more accountable and judged in relation to their peers. Merit pay brings evaluation of outputs to teaching, a standard used in most professions.

MERIT PAY IS MORE COST-EFFECTIVE FOR THE TAXPAYERS

Under the current single-salary teacher pay system, a salary increase for one means a salary increase for all. Based on survey data, a majority of the public (71 percent) believes teachers deserve to earn more. However, ''just to bring the salaries in the below-average states to the national average would cost $8.5 billion—an amount that is fiscally irrational.'' Proponents of merit pay note that it would be less costly and would produce greater results to target raises toward the most effective teachers. According to the April 2005 Harris-Hart survey, ''public support for paying the costs of higher teacher salaries is enhanced if higher pay is linked to teacher performance and other accountability measures.''

REFUTING CRITICS

Among the criticisms raised by opponents of merit pay is that it inappropriately uses student performance as a measure of a teacher's effectiveness. Yet, as the aforementioned studies show, a merit pay system can be built around a variety of objective and subjective measures, decided at the local level. Successful pay systems can factor in a variety of measures of excellence, including peer and principal review, in addition to student achievement.

A parallel issue is outcome-based payments for physicians under Medicare, which is currently under consideration by the Senate Finance Committee. The aim of merit pay for teachers is similar to that of outcome-based payments for physicians. As expressed by Senator Max Baucus (D–MT), that proposal would ''reward better health-care quality with better payment.''

Critics also contend that it is unfair to grade teachers and that grading could be subject to favoritism. One only needs to be reminded that testing is a reality in education. If gauging performance is inappropriate, then why do we give grades to students? The typical response, as noted in the Christian Science Monitor, is, ''We give grades because they help us understand which areas need improvement and because they acknowledge superb effort and ability.'' Also, grading based on student performance is not subject to favoritism; grading is simply a reflection of the numbers. A carefully crafted merit pay program with clearly defined measures and expectations should alleviate this concern.

Another criticism by opponents is that merit pay plans have not proven successful. A number of merit pay experiments tried in the 1980s are no longer in place. Critics argue that the decline of such programs was due to the difficulties of accurately identifying effective teachers and rewarding good teaching practices. These difficulties have been erased following annual testing of grades three through eight as required by NCLB, which provides objective measures to identify effective teachers. Proponents of change insist the experiments in the 1980s were too limited in scope, and were destined to fail due to the stiff resistance from teachers and unions. The programs running in Denver and Chattanooga are two examples of programs that are yielding positive results. Furthermore, now that NCLB gives parents the choice to transfer out of low-performing public schools, a new sense of competition among schools has emerged that has forced changes in how parents and teachers view public schools.

Critics also raise concerns that teachers will ''cherry pick'' the best students to be in their class. Supporters of merit pay note that this concern can largely be addressed by measuring student achievement using ''value-added standards,'' which look at student improvement or gain over the course of the year instead of students' level of achievement at the end of a year. Furthermore, when value-added standards are used, merit pay remains available to teachers of all students. That is, it likely is easier to get a 25–percentile gain from a student starting in the 30th percentile than a 15–percentile gain from a student already at the 80th percentile.

Critics of merit pay argue that it damages the school culture when ''superior teachers'' are singled out and given special awards. They note that in competitive industries, both employers and employees must consider the possibility that competing companies will provide better products or services at a lower price, and these incentives ''are not present in public education.'' In response, supporters of merit pay point to its wide and successful use in private schools, which suggests that it is neither infeasible nor unattractive. Private schools note they use merit pay to recruit and retain the quality teachers demanded by tuition-paying parents. This broad use of merit pay by private schools, of course, highlights a critical distinction between public and private schools: such initiatives are ''easier in the private sector because administrators are seldom subject to the constraints imposed by a collective bargaining process.'' Even so, the successes seen in the private schools could point to the direction public schools might take if teachers were rewarded for student achievements.

Along the same lines, some critics assert that rewarding some teachers and not others harms teacher collaboration within a school. Yet, this did not prove true in the Denver program. When Denver teachers were asked whether their pilot program had an impact on ''cooperation among teachers,'' the results were that 53 percent of the participating teachers said the impact was positive, and only 2 percent said the impact was negative. According to Brad Jupp, the teacher representative to the ProComp taskforce, the Denver teachers' survey response ''flies in the face of preconceptions that teachers fear pay for performance based on student growth because it will harm collegial relations.'' Furthermore, schools need to reward the best teachers to attract and retain them in the schools that need them the most. According to education researchers Caroline Hoxby and Andrew Leigh, in order to attract high-aptitude individuals back into teaching, ''school districts need to reward teachers in the same way that college graduates are paid in other professions—that is, according to their performance.''

The National Education Association argues that, rather than pay increases for some, all teachers should be paid more. However, history shows that there is no direct connection between spending more money on education and increased student achievement. According to the most recent analysis by the Organization for Economic Cooperation and Development (OECD) of its member countries' spending on education as a percentage of Gross Domestic Product, the United States spends the second-highest amount. And yet, U.S. student achievement does not match the higher-than-average expenditure. While the proportion of individuals completing high school has been rising in all OECD countries, the rates of students graduating from high school in most OECD countries are now higher than those in the United States. Another study shows a similar lack of correlation. According to the National Center for Education Statistics, the United States outspends the other G–8 countries in per-student expenditures. And yet, fourth-grade students in the United States ranked in the middle of the list of countries in mathematics, and eighth-grade students ranked 15th among the 45 countries in mathematics.

CONCLUSION

Expectations are greater now for teachers because the No Child Left Behind Act holds schools accountable for student achievement. Merit pay is a positive way to reward those who are effective in raising student achievement. Congress needs to help states to implement alternatives to the traditional, single-salary schedule used by the majority of public schools to pay teachers if it wants to assure that schools nationwide meet the NCLB's important goals. Merit pay increases schools' ability to attract and retain highly qualified teachers, especially in fields that command high salaries outside of education, such as math and sciences, and it encourages teachers to work in high-needs schools. A carefully developed merit pay plan, with clearly defined measures and expectations, should be able to address any legitimate concerns raised by teachers and their unions. Eighty percent of parents and teachers support salary increases for teachers who improve student achievement. The Teacher Incentive Fund proposed by the President and passed by the House will permit many more schools to implement public-supported reforms, and will provide a major incentive for needed changes in teacher compensation nationally.

Mr. SCHUMER. Mr. President, I rise today to express my strong support for the extension of a program that has provided vital support to our Nation's

dairy farmers, helped to maintain the milk supply, and perhaps more importantly has helped to preserve an important way of life in rural America. The program I speak of is the Milk Income Loss Contract, MILC, Program, which since its inception in the 2002 farm bill has provided a crucial buffer between our Nation's hard-working dairy farmers and the rollercoaster ups and downs of the milk market.

America's farmers are the backbone of its rural communities, and as markets, weather, and other challenges become more daunting we must make every effort to support them when they are in need. It is not just for the benefit of our farmers, who work hard year-round, often in the face of unforgiving circumstances, and their families, but for the towns that they help to support and for the health of the land that they steward. Small farms are the big business of rural America, and if it becomes too hard for them to survive, the communities where they are lost will suffer, both economically and culturally. Likewise, as the economic pressure to develop grows, more and more open space will be lost to suburban sprawl if small farms disappear. Allowing these farms to go under by failing to extend sensible supports like the MILC Program would be bad for the economy, bad for our environment, and bad for consumers.

In very few places across the country are the stakes of the MILC Program's survival more starkly apparent than in my State of New York. Agriculture is a dominant industry in New York, and dairy farmers are the bulwark of New York's agricultural economy. In light of dramatic price swings and development pressures that are more severe than almost anywhere else in the country, the dairy farmers of my State need the type of support provided by the MILC Program when prices hit rock bottom. New York's farmers have received millions of dollars under the program, and I can tell you that that money has made a real difference in helping small family farms pull back from the brink and stay in business.

Let me be clear about one thing. While this program provides crucial and timely support, it is not simply a big-dollar bonanza for America's dairy farmers. Payments under the program only kick in when prices dip below the trigger price of $16.94 per hundredweight, when they are most needed. In fact, in the almost 4 years covered by the program, there were only 26 months in which USDA had to issue payments. There was an entire year, from May of 2004 to May of 2005, where prices were fortunately high enough that support was not necessary. I raise these facts simply to say that anyone who would oppose this program, which provides crucial, targeted assistance to small dairy farms, on the grounds that it is a budget buster or boondoggle is way off the mark.

The MILC Program expired at the end of September, so the need to extend it is pressing and vital. As we enter the New Year, milk prices may once again drop below the trigger price, and we need to make sure that the MILC Program is in place to do its job should our dairy farmers find themselves in need. The MILC Program is very important to New York, but not just to New York. The fact that the extension of this program has drawn strong support from Democrats and Republicans from multiple regions demonstrates its importance to our entire Nation.

While I have serious misgivings with other provisions contained in this budget reconciliation conference report, the 2-year extension of the MILC Program is one item that I am glad to see is included. The MILC Program has shown itself to be an effective and vital part of our Government's commitment to support America's farmers, and I strongly support its extension.

Mr. REED. Mr. President, this evening the Senate passed the conference report to the fiscal year 2006 Department of Labor, Health and Human Services, and Education appropriations bill. I want to express my concerns with this conference report. Not only does this legislation short-change important priorities compared to the Senate version of this bill, which passed on a near unanimous vote of 94 to 3, it is not the only affront to these programs since an additional across-the-board cut to discretionary spending is included in the Department of Defense appropriations conference report.

I am disappointed that this conference report fails to provide our children with the resources they need to compete in today's world. Children of all ages will be affected by the decisions we make today.

This conference report decreases funding to programs that help students succeed at every stage. Indeed, it cuts education funding for the first time in 10 years. Despite rising tuition costs, college students will not see an increase in financial aid. The supplemental educational opportunity grant, SEOG, program will receive $26 million less than the Senate bill we passed in October. The maximum Pell grant award will be frozen at $4,050 for the fourth year in a row, making it more difficult for students to keep up with tuition and the cost of attending college.

Funding for No Child Left Behind Act programs are reduced by 3 percent, for a total that is $13.1 billion below the authorized level. Elementary and secondary school children will experience a decrease in services funded through the School Improvement Programs, the educational technology State grants, and the Javits Gifted and Talented Program, which all received less funding than in the Senate bill.

Title I of the No Child Left Behind Act will see its smallest increase in 8 years, for a total of $12.8 billion. This is $9.9 billion less than the $22.75 billion authorized in the No Child Left Behind Act. This funding is critical to improve education in this country. In 2001, members of this chamber made a commitment with the No Child Left Behind Act to give every child an opportunity at an excellent education. The President and our colleagues from across the aisle should join us in seeking to uphold that commitment.

Infants and toddlers will also receive fewer services. The President's fiscal year 2006 budget proposal, the House bill, and the Senate bill all included increases in funding for Head Start. However, this conference report ignores those increases and instead includes less than 1 percent increase for this important early childhood program. Head Start centers across the country are cutting back on comprehensive services, the core of this program's success, because funding has been minimal year after year and has not kept pace with inflation. In a time when we should be increasing our investment in early childhood development, this conference report moves us in the wrong direction.

The conference report also reduces health funding by a total of $466 million. It will set back critical research at the National Institutes of Health, unravel already fragile health care safety net programs, undermine essential health professions training programs, and leave our Nation completely unprepared to respond to a looming avian influenza pandemic.

In this conference report, the National Institutes of Health, NIH, after seeing its budget doubled only a few years ago, will face the smallest percentage increase—less than 1 percent—in more than three decades. Withdrawing our support for revolutionary basic and clinical research at such a crucial time will undoubtedly set back our efforts in the war against cancer, as well as impede our quest to learn about the causes of and find effective methods to diagnose and treat debilitating conditions such as diabetes, heart disease, Alzheimer's, Parkinson's, Multiple Sclerosis, Lou Gehrig's disease, and autism. These diseases are not only devastating to those who are afflicted and the families who care for them, they continue to be a significant drain on our health care system and our economy.

This bill also deals a devastating blow to essential safety net programs. First, it essentially stops cold the President's initiative to create 1,200 new or expanded health center sites to serve an additional 6.1 million people by 2006. The Senate-passed bill provided $105 million over the fiscal year 2005 level for community health centers while this bill contains an increase of only $66 million, in essence freezing any new competition for community health center funds. Second, the report slashes funding for programs that train health care providers who serve in health centers and other safety net sites.

Title VII health professions programs have a long tradition of responding to

the needs of medically underserved communities as well as providing support to increase the racial and ethnic diversity of our health care workforce. Under this bill, a broad array of small but essential programs pertaining to trauma care systems, geriatrics training and education, and emergency medical services will be eliminated. Over the past several years, Senator ROBERTS and I have led a strong bipartisan effort in support of these essential education and training programs. Gutting these programs is penny-wise and pound-foolish. It will cripple our ability as a nation to be better prepared for the inevitable emergencies and tragedies that happen every day and the demographic tidal wave that will soon be hitting our health care system.

The bill also neglected to include a Senate amendment allocating nearly $8 billion in emergency funds to combat the avian flu. Instead, the conference report actually diverts millions from the annual influenza program budget to pay for rural health programs, with a promise that funding for avian flu would be included in the pending Defense appropriations bill but at a much lower amount than the Senate originally provided.

This conference report fails to provide sufficient funding for the Low Income Home Energy Assistance Program, LIHEAP. Rising energy prices threaten to financially overwhelm low-income families and seniors. This winter, the average family will face a $1,000 natural gas bill, an increase of 38 percent from just last year. For families using heating oil, prices are projected to hit $1,400, an increase of 21 percent over last year. These price increases are overcoming workers' salaries and seniors' Social Security checks. American families need economic relief from high energy prices. They need the security to know they will not have to decide between heating their homes or feeding their families and paying the energy bill or buying lifesaving medicines. With a sharp increase in energy prices this year, it is obvious that level funding for the LIHEAP program is inadequate. A majority of the Senate supports $5.1 billion in funding for LIHEAP, but this conference report does not reflect the will of my colleagues.

This conference report fails the American people in a number of very important ways. It fails to maintain our promise to give children the opportunity to achieve their full potential. It fails to preserve our commitment to groundbreaking and potentially lifesaving advancements in medicine. And it fails to sustain support for essential programs that help vulnerable Americans.

Mr. DURBIN. Mr. President, American families are ready for a change. They take a look at the priorities of this Republican Congress and the record of the Republican Party and say: it is time for a new direction for our country.

You need to look no further than the Labor-HHS conference report. It is a low point of a Republican Congress that is disengaged from the real needs of American families. This bill is a crowning achievement of a Republican agenda out of touch with voters.

Republicans are ignoring the problems that matter most to families in Illinois and all across the country health care, education, and jobs.

What we have is a bill that cuts education funding for the first the first time in a decade, slashes health funding by more than $300 million, and eliminates funding for trauma care.

This bill pulls the rug out from under America's working families.

Many working families have children in public schools. I have been in a lot of public schools in Illinois that serve lower income kids. No matter how successful those schools are, I can tell you—they don't have money to spare. This bill actually spends less Federal money on schools and education than any federal budget in the last 10 years.

How can we in good conscience reduce our commitment to education for low-income kids in public schools?

But perhaps one of the more striking failures of the reconferenced version of the Labor-HHS appropriations bill is the utter lack of concern over preparing for the avian flu.

Never mind that this bill eliminates the $7.9 billion added to this bill on the Senate floor to help local hospitals and health departments get ready for what pandemic flu.

This conference report goes so far as to take an additional $120 million out of already underfunded accounts at the CDC–money specifically designated to prepare for pandemic flu.

''We'll take care of that later,'' we were told.

Meanwhile, my understanding is that the Defense appropriations bill includes half of the funding the Senate approved—half of the funding the President requested—to prepare for avian flu.

What is driving these cuts is a tax reconciliation that benefits corporations and the wealthiest among us. Those benefits come at the expense of basic guarantees for working American families—that they can have decent public schools; that they can see a doctor; that they have a chance to getting back into the workforce when they are out; and that if a killer flu pandemic breaks out in this country we will have the capacity, the drugs, and the organization to beat it back.

As a member of the conference committee, I did not sign the conference report and strongly oppose it.

Together, America can do better.

Mr. REID. Mr. President, tonight the Senate adopted the fiscal year 2006 Labor-HHS-Education conference report by a voice vote. I would like to note for the Record that I do not support this legislation.

This bill reflects the misguided priorities of the Republican Congress and will shortchange vital health care, education, and labor programs in order to cut taxes.

At a time when the need for a well-educated, well-trained workforce is more critical than ever, Republican conferees provided education, health care, and job training programs $1.4 billion below last year's level.

This bill cuts education funding for the first time in a decade. It cuts funding for No Child Left Behind Act programs, and the maximum Pell grant is frozen for the fourth year in a row, even as college costs are skyrocketing. And, for the first time 10 years, the Federal Government will slide backward on its commitment to students with disabilities because this bill cuts the Federal share of the costs of special education.

At a time when most Americans cite health care as their top priority, Republican conferees provided health care programs $466 million below last year's level, including a $137 million in cuts to rural health programs and a $185 million cut to the Bureau of Health Professions. Cutting these programs will make it even harder to recruit qualified professionals in many parts of the country.

Moreover, Republican conferees eliminated nine vital health care programs altogether, including trauma care, rural emergency medical services, the geriatric education centers, health education training centers, and the healthy community access program. As a result of these cuts, not one new community health center will be created next year.

At a time when we are the verge of major new breakthroughs in disease prevention and treatment, the conference agreement also includes the smallest percentage increase for the National Institutes of Health, NIH, since 1970, which will hinder promising medical research and disease prevention initiatives.

These are just a few examples of the unconscionable cuts to crucial programs in this bill. Unfortunately, these cuts will be even deeper because the Republicans imposed an across-the-board cut against all nondefense and homeland security programs in the Defense appropriations bill.

In summary, Mr. President this bill is bad for our children, bad for workers, bad for seniors, and bad for this nation. America can do better.

Mr. KOHL. Mr. President, I rise today in opposition to the conference report to accompany the Labor, Health and Human Services, Education and Related Agencies Appropriations bill. This bill does not reflect our Nation's shared priorities and is a far cry from representing Wisconsin values. The people of Wisconsin value quality education for their children, affordable and decent health care for their families, and sound job training for workers. This bill falls short on all three accounts.

For the first time in a decade, the LHHS bill cuts total Federal education

funding. Funding for No Child Left Behind programs would be cut by $779 million bringing it to its lowest level since 2002. Funding for Title I, which serves low-income, disadvantaged students and schools across the nation, would receive $9.9 billion below the authorized level, its smallest increase in 8 years. And again, Congress fails to live up to its promise to provide 40 percent of the costs of educating students with disabilities: the bill cuts the Federal share of special education spending from 18.6 percent to 18.0 percent, just as our school districts are struggling to keep up with rising costs. Funding for Pell grant awards, which help make higher education affordable for many students, is frozen at $4,050 for the fourth year in a row, funding for Even Start and Education Technology is slashed, and funding for the National Youth Sports Program is eliminated, leaving almost 1,500 Wisconsin young people without summer enrichment programs they have come to count on. The list goes on and on.

And education is not the only investment shortchanged. Some of the largest cuts in the LHHS bill are in programs that help shore up the health care safety net for people lacking other access to care and that address shortages of healthcare providers in underserved urban and rural areas. The conference report cuts funding for community health centers, which serve the uninsured and underinsured, to a lower level than provided in either the House or Senate versions of the bill. This amount would not allow a single new community health center to open in the coming year. Funding for the Bureau of Health Professions, which helps recruit qualified health professions throughout the country, would be cut by $185 million, including the elimination of geriatric education centers and health education training centers. Rural health programs would be cut by $137 million, including the elimination of the healthy community access program and rural emergency medical services.

In addition, funding levels have not kept pace with our need for investment in lifesaving biomedical research. The National Institutes of Health's budget would receive a funding increase of less than 1 percent, the smallest percentage increase to NIH since 1970. NIH will have to reduce the numbers of research grants awarded by 355. The bill would provide no increase in Federal funding for Alzheimer's research threatening the progress of promising research on that devastating disease. Less money would be available to support new research grants, attract talented, young researchers to the promising field of Alzheimer's research and fund clinical trials to test new drugs to treat the disease—and this is just one example of the damage to vital research that the LHHS conference report would do.

Labor programs are not immune from the slash and burn approach to appropriations embodied in the conference report before us. They are cut by $430 million. At a time when five percent of Americans, and four and a half percent of people from my State of Wisconsin, are unemployed, this bill wrongly reduces adult job training by $31 million and youth job training by $36 million. Instead of helping the unemployed find work and providing training to upgrade the skills of those who have jobs, this conference report turns its back to them.

I know we can do better for our children and families. I supported the Senate version of this bill, which was bipartisan and passed by a vote of 94–3. Unfortunately, this conference report falls far short; it is neither bipartisan nor bicameral, and actually provides $1.4 billion less than last year's level. In fact, LHHS is the only fiscal year 2006 appropriations bill to receive an overall cut in funding from last year.

I want to thank Senators SPECTER and HARKIN for working tirelessly to improve this bill. I also want to thank them for the modest increases they provided in the CMS Survey and Certification program, the ombudsman program, as well as their work to restore Perkins funding. However, I cannot support a bill that forces our schools, our health care system, and our workforce to do more with less. I urge my colleagues to join me in rejecting this conference report.

Mr. KENNEDY. Mr. President, the Christmas spirit was nowhere to be found tonight on the floor of the United States Senate as Republicans rushed through unconscionable cuts to the programs that American families deserve. This conference report affects the lives of every single American, and it lets them down. It fails our commitments to the education of our children, to our health care, to the poor, and to our jobs. At a time when we should be moving forward, and helping families meet the challenges of higher costs, this conference report moves us backward.

EDUCATION

Parents know that education is a critical factor in making the American dream a reality for their children. An educated citizenry also makes a strong Nation possible. We cannot compete in the world without skilled workers. We cannot maintain a strong defense without a skilled and educated military.

Once again, the United States has been presented with a global challenge, as we were when the Soviets launched Sputnik in 1958. In order to face this challenge with confidence, we should invest in the transforming power of education. That's not what this conference report says. This conference report says that education is not a priority. It says global competitiveness is not a priority. It says basic fairness is not a priority. It says the American dream is not a priority.

In the face of this global challenge, this conference report does not invest more in education. In fact, for the first time in a decade, this conference report cuts the education budget. As we learn more about the critical importance of early education, as our elementary and secondary schools struggle to help our children meet higher standards, as a college degree is becoming an imperative, and as the cost of that degree is skyrocketing, the Federal budget for education is actually going down.

If our country is to remain strong in this rapidly changing world, our economy must work for everyone, and every American must have an equal opportunity to succeed. No Child Left Behind is not just a political slogan. It's a solemn pledge to every parent and every child in America.

At a time when requirements under the law are more demanding than ever, this conference report cuts funding overall for No Child Left Behind programs by $1 billion, for a total that is $13.4 billion less than promised in the law. Over 3.2 million children will be left behind. Next year, schools have to raise the bar for adequate yearly progress, administer tests in reading and math on an annual basis, and ensure that all teachers are highly qualified. This conference report tells them they're on their own.

Title I—the key NCLB program, which targets disadvantaged students—is cut for the first time in 13 years. Title I funds will be $28 million lower than last year, and 160,000 fewer children will be served. Funding to Massachusetts schools will be cut more than $4.3 million.

The conference report cuts Head Start funds by $68.5 million, leaving 750,000 eligible preschoolers without services, and dropping from the program 9,500 children who are currently enrolled in Head Start classrooms. It slashes the Even Start family literacy program, taking services away from nearly 35,000 children.

The conference report cuts funds for after-school programs, denying after-school programs to 13,000 children currently enrolled. The conference report also cuts funds to keep our schools safe and drug-free.

With the first cut to special education funding in a decade, this conference report moves backwards on our commitment to disabled students. The Federal share of the cost of educating students with disabilities actually drops from 18.6 percent last year to 17.8 percent this year. The funding in the report is more than $4 billion short of the amount promised just 1 year ago when we passed the IDEA Improvement Act.

At a time when American students are performing below the international average in math and science, the conference report cuts $13 million in funds for the Math and Science Partnerships at the Department of Education, leaving funding well below half of the amount promised in No Child Left Behind.

At a time when technology is more and more prevalent in our lives and in

our economy, this conference report continues the bewildering downward trend in educational technology funding. In fiscal year 2004, the program was funded at almost $700 million. This conference report includes $248 million, a 50 percent cut since last year and just over a third of the 2004 funding.

At a time when college costs have skyrocketed 46 percent since 2001, and almost 400,000 college-ready students do not go to a 4-year college because of financial need, this conference report provides no increase in student aid. It leaves Pell grants frozen in place for the fourth year in a row.

JOBS

Just as this conference report leaves millions of children behind, it also leaves millions of American workers behind.

Close to 8 million Americans are unemployed, and most remain unemployed for 18 weeks or more. The picture is so bleak that many workers have given up hope of finding work altogether. The real unemployment rate is almost 9 percent when these discouraged workers are counted.

Workers affected by the recent storms in the gulf are particularly at risk. Hundreds of thousands of gulf coast workers continue to struggle to find work in the wake of Hurricanes Katrina and Rita. Twenty-five percent of Katrina evacuees are unemployed, including 30 percent of those evacuees that have been relocated across the country. African-American and Hispanic evacuees fare even worse, with an overall unemployment rate of about 43 percent. Thus far, a total of 502,000 initial claims for unemployment benefits can be traced to the two storms.

Yet, the conference report would cut funding for unemployment insurance and employment services offices that help jobless workers around the country. The conference report also cuts job training, as many workers struggle to improve their skills in order to secure good jobs. These illogical steps are an insult to those struggling to recover from our Nation's greatest national disaster and those struggling to meet the challenges of a global economy.

In addition, as we continue the long process of rebuilding the gulf coast, thousands of relief and recovery workers are facing toxic working conditions. Workers cleaning up in the aftermath of the storms are being exposed to hazardous chemicals, oil and sewage contaminated waters, mold, and other hazardous substances. Even outside of the gulf coast region, death rates among Hispanic and immigrant workers continue to be alarmingly high. Yet, our Government will be doing less to protect the lives and health of our workers. The small, 1.8 percent increase that the conference report provides for funding the Occupational Safety and Health Administration is more than eaten up by inflation and won't be enough to maintain current levels of enforcement and training.

The conference report also shortsightedly ignores the future needs of health care workers. We are facing a looming threat of a pandemic flu epidemic, yet the conference report prohibits the Department of Labor from enforcing key safety standards to protect health care workers from tuberculosis. These are very basic measures that would help protect healthcare workers from all deadly infectious diseases, and it is unconscionable to bow to special interests at the expense of those who will be on the front lines of our battle against this public health crisis.

In addition to threatening the safety of American workers, the conference report also threatens their job security. It is hardly news to any of us that globalization is rapidly creating a single global workforce. Now more than ever, the jobs of American workers are at risk due to the poor wages and working conditions in other parts of the world. It's critical that we invest in efforts to improve working conditions around the world, for the sake of all workers, including our own. Yet, the conference report slashes the budget for the International Labor Affairs Bureau, ILAB, by 22 percent—from $93 million to $72.5 million—threatening our ability to protect American jobs and protect the basic rights of workers and children across the globe.

HEALTH

The conference report also fails to protect American families from public health catastrophes.

Congress has few higher priorities than protecting the American people from the deadly strain of influenza that is threatening the world and could take the lives of millions of Americans and damage the health of millions more.

The threat from this deadly new disease has been compounded by our inattention and failure to prepare. For years, public health experts sounded warning after warning about the devastation that a flu pandemic would bring, but year after year, we failed to respond to this deadly threat in its earliest stages.

Canada, Australia, Britain, Japan, and other nations released plans long ago. They're implementing their plans now, but the Bush administration has put out a plan for only one Federal agency. A response plan for the Department of Health and Human Services is a critical first step, but even that plan is incomplete. It's missing the actual operational plans for responding to a pandemic.

The President has called, however, for a significant investment in preparedness. I attended his speech at NIH, where he urged that $7 billion be appropriated immediately for preparedness.

We still have time to avert the serious consequences that a pandemic would bring, but only if we act now to begin improving our readiness. The Senate heeded the call to action by unanimously approving an amendment for $8 billion in preparedness funding offered by Senator HARKIN.

But the Republican leadership isn't on board. They stripped the $8 billion amendment out of this conference report, and provided only half that amount in the Defense Appropriations conference report. These irresponsible cuts will mean that critical programs will have to be delayed. Which parts of our response do our Republican colleagues think we should delay? Production of new vaccines? Stockpiling of flu medicine? Support for hospitals and health agencies preparing for the pandemic? I'd like to hear them explain to the American people which of these activities they think are unimportant, which of these priorities can wait, and which are not needed if disaster strikes.

This conference report also means that we will fail to capitalize on the promise of this century of the life sciences. With the 1 percent across the board cut, funding for NIH will decrease. This has happened only four other times in NIH history. This is woefully inadequate to maintain our tradition of research excellence and breakthrough medical science. This is the lowest NIH funding level in 35 years and the research and development budget fails to keep up with inflation. These budget cuts will mean that four of five innovative new ideas will be ignored. Over 500 new research grants will fall by the wayside. It's unbelievable that with the threat of a pandemic looming over America, the Republican Congress is denying the resources we need to discover new, lifesaving treatments and cures.

Not only does the conference report not include funding for the avian flu preparedness, funding that would help to improve State and local preparedness against bioterrorist attacks was cut by over $96 million.

As we know, maintaining the health of our Nation is not limited to emergency preparedness. Providing basic health services to the most vulnerable Americans and health promotion, and disease prevention are also vitally important. But this conference report cuts critical health promotion and prevention programs at the CDC will be cut by $307 million and HRSA programs are slashed by $754 million.

This conference report funds community health centers, that serve as a safety net of care for the most vulnerable, at less than half of the increase passed by the Senate, while eliminating the Healthy Communities Access Program which provides funds for health care providers, community-based organizations and local government to coordinate and strengthen health services for the poor and uninsured members of their communities. Funding is also cut for critical health professions training programs that address the shortages of providers and train them to deliver care in underserved areas and to serve the 46 million Americans who lack health insurance—often in community health centers. Funding for critical health professions

training programs that encourage diversity in the health professions and train health care providers that will deliver care in underserved areas are cut 52 percent and training for geriatric medicine was cut by 100 percent.

With a 1 percent across the board cut, several programs, including family planning and HIV/AIDS prevention programs, will now receive a decrease in funding, despite the growing need for these services.

LIHEAP

The conference report leaves our poorest Americans out in the cold in a time of soaring energy prices. Households heating primarily with natural gas will pay an average of $281 more this winter for heat—an increase of an incredible 38 percent over last year. Those relying primarily on oil for heat will pay $255 more—an increase of 21 percent.

This fall, the Senate voted against fully funding LIHEAP four times, and this conference report only provides flat funds. This is unacceptable.

We know that heating costs are at record levels this year.

Big oil profits are fatter than ever. Exxon-Mobil—the largest oil company in the United States—reported 3rd quarter profits of almost $10 billion, a 75 percent increase over last year.

Exxon-Mobil alone made $10 billion in the last quarter—yet the Republican leadership refuses to fund LIHEAP at its authorized level of $5.1 billion. The Republican leadership is Robin Hood in reverse—robbing the poor to pay the rich.

So this conference report leaves our children behind, American workers behind, and American families behind. It leaves America behind.

It's unfortunate that Christmas comes this week, because this conference report is the Grinch that steals Christmas for so many. While the neediest Americans are struggling to find some hope this season, the special interests are sledding away with all the presents. Bah humbug.

We should embrace the hopes and dreams of millions of Americans—not abandon them, as this conference report does. All parents want their children to have lives of fulfillment and opportunity; to raise strong and healthy families and afford to live comfortably in safe neighborhoods. Our actions in Congress should strengthen, not weaken America.

The PRESIDING OFFICER. Without objection, the conference report is agreed to, and the motion to reconsider is laid on the table.

## MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 10 minutes each.

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

## UNANIMOUS-CONSENT REQUEST—H.R. 4297

Mr. KYL. Mr. President, I have a unanimous consent request to remake.

As my colleagues know, there is one major unfinished piece of business yet that we need to conclude, and it is the action on the tax reconciliation bill. This is a bill which has the section 179, small business expensing, the small savers credit for low-income families, those making under $25,000 a year, above-the-line deduction for college tuition costs, R&D, tax credit, and extension of capital gains and dividends.

These are all-important matters that we need to act on.

As a result, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 325, H.R. 4297, the House reconciliation bill.

I ask unanimous consent that all after the enacting clause be stricken and the text of S. 2020 as passed by the Senate be inserted thereof; that the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, the Senate insist upon its amendment and request a conference with the House and the Chair be authorized to appoint conferees at a ratio of 2 to 1.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Mr. President, reserving the right to object, the majority seeks to go to conference on the House-passed tax reconciliation bill. The House-passed bill includes tax cuts for dividends and capital gains. And the House-passed bill does not include language to prevent 17 million middle-income Americans from getting a tax increase from the alternative minimum tax.

The Constitution requires the House to go first on tax measures like this. In order to build momentum for their tax cuts, the majority in the Senate chose to proceed before the House. But now the Constitution requires that the Senate take up the House-passed tax reconciliation bill and amendment.

That is where we are.

There are a number of Senators on this side of the aisle who would like to avail themselves of the opportunity to propose amendments to the House-passed bill. I expect that several Senators would choose to substitute middle-income tax cuts as alternatives to the dividend and capital gains tax cuts.

It is important to remember that under the Budget Act Senators would have up to 20 hours to debate amendments to the House-passed bill. I, for one, would seek to offer a motion to instruct conferees on this bill to ensure that we do not raise taxes on those 17 million Americans who become subject to the AMT, unless we act. Under the Budget Act, Senators would have an additional 10 hours to debate motions to instruct conferees. We are not in the position to conduct 10 hours of debate at this late hour. The exercise, I might say, would be inappropriate. So I must object.

The PRESIDING OFFICER. Objection is heard.

## UNANIMOUS-CONSENT REQUEST—H.R. 4096

Mrs. HUTCHISON. Mr. President, if we are not going to take up the major tax cut at this time, I am going to ask unanimous consent to take up the AMT.

In 1969, when Congress passed the AMT it was supposed to affect 1 in 500,000 taxpayers who make over $200,000 a year. In fact, that is not the case today. By 2010, the AMT is expected to ensnare 32 million taxpayers, the majority of whom have adjusted gross incomes of under $100,000. In fact, this especially hits people with children. By the year 2010, among married taxpayers with two or more children, 85 percent of married taxpayers with two or more children in 2010 will face the AMT. It prohibits the ability to deduct for children.

So I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 326, H.R. 4096, the alternative minimum tax relief.

I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements related thereto be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Mr. President, reserving the right to object, the majority, through the Senator from Texas, seeks unanimous consent to pass the House bill which extends the AMT exemption level. The House-passed bill purports to be an AMT hold harmless bill. It is not. It does not hold everyone harmless.

In fact, 600,000 additional families will pay AMT next year under that House bill which the majority seeks our consent. Under the version we in the Senate passed last month, with 64 Senators in support, we ensure that not one additional taxpayer faces higher taxes in 2006 due to an onerous alternative minimum tax.

The same cannot be said of this House bill for which consent is agreed to.

It is true that if Congress does not act, 17 million more middle-income Americans will be subject to the AMT come January 1. We would prefer to get it right the first time and not have to make promises to close the gap for those 600,000 hard-working American taxpayers next year.

I ask the Senator from Texas if she would amend her request instead to seek consent for an AMT relief amendment that I believe the majority would be supportive of, since it shows the Senate's provision, so that no AMT taxpayers are created next year. Further, while we are seeking to do these tax cuts outside of reconciliation, we would have them count against the total allowed under reconciliation. That would be part of the amendment.

The text of that Senate amendment is pending at the desk, and I am asking, Will the Senator from Texas accept this amendment?

Mrs. HUTCHISON. Mr. President, with all due respect to the Senator from Montana, I don't see how we can take part but not all of the tax reconciliation bill. It is time to do away with the AMT.

I appreciate the fact that the Senator from Montana has said he, too, wants to do that and that we need to do it right. To do it right we need to do the whole tax reconciliation bill.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. I ask the Senator, will she object to an amendment I suggested that the whole AMT be held harmless and that it count under pay-go in terms of the tax, the budget provisions which provide for $70 billion over the next 5 years? Those are the two conditions.

Mr. KYL. Reserving the right to object to the proposed amendment to the unanimous consent, I believe on our side we would not object to the form of the so-called AMT patch that the Senator from Montana has proposed. Of course, we would object to his counting of that against the reconciliation number, or the so-called pay-go provision.

I guess I ask for an amendment to his proposed amendment which would accept the broader AMT patch, as the Senator first described it, but nothing in addition to that.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. As I hear their response, they will not agree to my two suggested conditions and amendments. Therefore, I must respectfully object.

The PRESIDING OFFICER. An objection has been heard.

Mrs. HUTCHISON. Mr. President, I do hope the Senator from Montana, working with the chairman of the Committee on Finance, will make it a priority early next year to have the tax reconciliation package go through with AMT and with the other tax cuts that would be extended to show the American people they can rely on the tax cuts that have been passed and have helped the economy in its recovery.

It is very important we not leave any question in anyone's mind that the tax cuts that started the economic upturn 2 years ago will be extended. The American people will get to keep the money in their pocketbooks, spend it, and fuel the jobs our economy has produced.

Mr. BAUCUS. Mr. President, I listened carefully to the Senator from Texas. I think we all agree we have to do something about the AMT. It is a big problem.

I, frankly, tell the Senator I have introduced a bill to totally repeal AMT. It is a pernicious stealth tax and should not be incurred. We would like to work with the Senator to try and find a way to accomplish that.

Mrs. HUTCHISON. I sign on to that effort immediately. With this kind of coalition maybe we can do something very important by doing away with the AMT in this country.

## UNANIMOUS-CONSENT REQUEST—S. 2164

Mr. DURBIN. Mr. President, as part of a bipartisan action this morning, Democrats and Republicans agree to send a reconciliation bill back to the House of Representatives for further consideration. Even though the vast majority of this bill hurts working families and the most vulnerable among them, there were a handful of important proposals that we support in that bill that need to be enacted immediately. That is why I am going to be asking unanimous consent in just a moment for the Senate to pass the Health and Welfare Relief Act of Senator STABENOW of Michigan.

This bill prevents the scheduled reduction in Medicare physician payments while holding Part B premiums harmless for beneficiaries. The bill extends TANF and transitional medical assistance, TMA, for an additional year. Finally, the bill provides temporary Medicaid relief to Katrina victims.

We should all be able to agree, even if there are parts of the bill subject to a point of order, parts that will be debated, there are many provisions in that bill that meet pressing needs that are important and need to be addressed on a timely basis. Many of them are taken directly from the conference report my friends across the aisle have just supported. I hope we can take up this bill and pass it today.

Therefore, I ask unanimous consent the Senate proceed to the immediate consideration of S. 2164, the Health and Welfare Relief Act of 2005, introduced earlier by Senators STABENOW, REID, BAUCUS, and others; that the bill be read three times, passed, and the motion to reconsider be laid upon the table without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, I object.

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I have a series of judicial nominations that have been cleared on both sides. I ask unanimous consent the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Nos. 457, 458, 459, 460, 461, 462, 463, 471, and 472. I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Joseph Frank Bianco, of New York, to be United States District Judge for the Eastern District of New York.

Timothy Mark Burgess, of Alaska, to be United States District Judge for the District of Alaska.

Gregory F. Van Tatenhove, of Kentucky, to be United States District Judge for the Eastern District of Kentucky.

Eric Nicholas Vitaliano, of New York, to be United States District Judge for the Eastern District of New York.

Kristi Dubose, of Alabama, to be United States District Judge for the Southern District of Alabama.

W. Keith Watkins, of Alabama, to be United States District Judge for the Middle District of Alabama.

Virginia Mary Kendall, of Illinois, to be United States District Judge for the Northern District of Illinois.

FEDERAL COMMUNICATIONS COMMISSION

Michael Joseph Copps, of Virginia, to be a Member of the Federal Communications Commission for a term of five years from July 1, 2005. (Reappointment)

Deborah Taylor Tate, of Tennessee, to be a Member of the Federal Communications Commission for the remainder of the term expiring June 30, 2007.

NOMINATION OF GREG VAN TATENHOVE

Mr. MCCONNELL. Mr. President, if I may, Calendar No. 459, that I just read and was just confirmed by the Senate, is a former member of my staff, Greg Van Tatenhove, who is, at the moment, the U.S. attorney for the Eastern District of Kentucky. He is an outstanding lawyer. He will be a fine addition to the Federal judiciary.

As a former staff member of mine, I say to my colleagues, you have done a great thing in confirming him. He will be a distinguished member of the Federal judiciary.

Mr. President, I strongly support the nomination of Greg Van Tatenhove to the U.S. District Court in the Eastern District of Kentucky.

Greg Van Tatenhove has been an outstanding public servant for the better part of 20 years. I first met Greg when he was a young aide to a Member of Congress. He later joined my legislative staff, where he performed superbly before leaving to attend law school.

Greg distinguished himself in law school by being chosen as an Articles Editor of the Kentucky Law Journal and receiving a citation for Excellence in Oral Advocacy in the Moot Court Program. After graduation from law school, Greg spent a year as clerk to U.S. District Court Judge Eugene Siler.

Greg was then chosen to join the Federal Programs Branch of the Department of Justice through the Attorney General's Honors Program. He was one of only eleven young attorneys to be chosen nationwide out of hundreds of applicants for this prestigious branch. This branch is well known for handling especially complex and precedent-setting legal cases on behalf of the United States. During his 4 years

at DOJ, the Department recognized Greg for his excellent performance with its Special Achievement Award.

Greg then returned to Capitol Hill, where he spent 7 years as Chief of Staff and Legal Counsel to Representative RON LEWIS of Kentucky. During his tenure, he developed a reputation as one of the Commonwealth's outstanding young legal minds, and in 2001, he was nominated by President Bush as United States Attorney in the Eastern District of Kentucky, a position which he has ably filled for the past 4 years.

In the course of his service as the chief federal law enforcement officer in the Eastern District, he approves all indictments, all major plea bargains, and is directly involved in all of the major cases involving the United States that come before the court, both civil and criminal.

Based on Greg's outstanding record, it should come as no surprise that President Bush nominated him as a judge for the U.S. District Court for the Eastern District of Kentucky on September 13, 2005. I applaud the President's choice, and I proudly support his nomination. Greg's high intellect, integrity, character, and devotion to public service make him an ideal choice for the District Court.

Greg's nomination has been widely praised by those who know him best, including two members of the Sixth Circuit Court of Appeals, five members of the District Court on which he will serve, and numerous former colleagues. They share my conviction that Greg will be a splendid addition to the federal bench.

In addition to his outstanding intellectual and professional abilities, Greg is a devoted family man. I know his wife Jane and his two beautiful children, Cooper and Catherine, are proud of him as he assumes this new position of responsibility.

It was clear to me 20 years ago when I hired Greg, even then a young man of great accomplishment, that he would go on to greater success. His confirmation is the result of many years of hard work, great intellect, commitment to public service, and the highest ethical and professional standards.

Greg Van Tatenhove will be an outstanding District Court judge, and I urge my colleagues to support his nomination.

Mr. LEAHY. Last week marked the 214th anniversary of the adoption of the Bill of Rights to the Constitution. Over the last week, this Nation and this Senate have been engaged in a debate about the importance of protecting and preserving those rights as we consider how best to revise and reauthorize the PATRIOT Act. We have also learned about the White House's domestic surveillance program that short-circuited the judicial safeguards established by Congress.

Today we engage in an action unique to the Senate. We consider for confirmation to lifetime appointments to the judiciary a number of nominees. This is an instance in which all three branches of the government are involved. The President nominates, the Senate considers the nominations and, if confirmed, the nominee is appointed to become a member of the judiciary. The judiciary has a particularly important role in the protection of the rights and liberties of all Americans. It was Justice O'Connor who, writing for the Supreme Court, noted that even wartime does not give the President a ''blank check'' when it comes to actions that impact Americans' rights. Every day in courtrooms across the country federal judges are the last line of defense for Americans' rights.

If anyone doubts the importance of the position of Federal district court judges, they need look no further than the district court judges assigned to sit on Federal Intelligence Surveillance Act, or FISA Court. This court was designed specifically to act as a check on the Executive Branch, and when it is consulted as the law requires, it performs a crucial role in our Government's system of checks and balances. In an extraordinary development, we read today that a federal judge assigned by the Chief Justice of the United States to serve on that court has resigned in the face of the disclosure of this President's secret surveillance program outside of the legal FISA process.

With the votes today, the Senate will be called upon to grant or withhold its consent to another seven judicial nominees. If they are confirmed, the Senate will have confirmed 225 of this President's judicial nominees to lifetime appointments. If they are confirmed, the Senate will increase the number of confirmations this year by 50 percent in just one day, from 14 to 21.

I chaired the Judiciary Committee for the second half of 2001. No judges had been confirmed that year before I became chair. In the last 5 months of the year we were able to have hearings, Committee consideration, and Senate votes on 28 new judges. We worked hard in spite of the 9/11 attacks and the anthrax attacks and succeeded in reducing vacancies and filling longstanding vacancies. Indeed in the 17 months I chaired the Judiciary Committee, the Senate proceeded to confirm 100 of this President's nominees. It took Republicans more than twice as long to match our record. Democrats proceeded in spite of the recent history of Republicans pocket filibustering more than 60 of President Clinton's qualified, moderate nominees.

As is clear from our record since that time, we have been willing to continue working with the Republican majority to fill vacancies on the federal bench—if only the President would send nominees. Unfortunately, along with home heating prices, gasoline prices, interest rates, the budget deficit and the trade deficit, judicial vacancies have also increased dramatically this year. It almost seems that unless the White House can pick a partisan political fight, it really does not care very much about the Federal judiciary. I noted in the spring that we had not received new nominations this year from the President. Only recently has that begun to change but there are still more than 25 vacancies without a nominee. I urge the President, as the Democratic leader and I have urged him for some time, to work with Senators on both sides of the aisle to identify qualified, consensus candidates to fill these vacancies.

NOMINATION OF VIRGINIA MARY KENDALL

Mr. DURBIN. Mr. President, included in the nominations just approved by the Senate is the nomination of Virginia Mary Kendall of Illinois to be the U.S. district judge for the Northern District of Illinois. She is replacing the retired Susanne Conlon. This is an extraordinary woman who will make a great contribution to the Federal judiciary.

She is strongly supported by Senator OBAMA and myself, as well as Speaker DENNIS HASTERT. On a bipartisan basis, we reviewed many fine candidates for this vacancy and found Virginia Kendall to be the best. With the approval of the White House, she moved through the Senate Judiciary Committee.

I am anxious, as soon as I finish these remarks, to go to the cloakroom, place a phone call, and give her a Christmas present and let her know her nomination has been approved by the Senate.

I would like to thank Judiciary Committee Chairman SPECTER, as well as Ranking Member LEAHY, for expediting the consideration of Ms. Kendall's nomination. I also want to thank Senator OBAMA for the significant role that he played in the selection process. Finally, I want to thank House Speaker HASTERT for his role in the process and for his willingness to continue an Illinois tradition of seeking bipartisan cooperation in the recommendation of Federal district court nominees for presidential consideration.

Virginia Kendall is a highly respected federal prosecutor in Chicago with a stellar reputation for diligence, intelligence, and integrity. She has been in the U.S. Attorney's office in the Northern District of Illinois for the past decade, and she has a great depth of experience.

She is one of the leading prosecutors in the country in the area of child exploitation over the Internet, and she was the lead counsel in the first Internet kidnaping case brought by the Department of Justice. She has also prosecuted domestic terrorism and corporate fraud cases.

Ms. Kendall has helped reduce Chicago's murder rate, by creating a novel program that emphasizes better outreach by law enforcement to parolee gun offenders and to at-risk students in the Chicago Public Schools. She has been the lead prosecutor in cases involving the sale of weapons over the Internet to minors.

Ms. Kendall has also been extremely active in pro bono work. She has created programs in which Federal prosecutors go into Chicago high schools and educate students about the dangers of gun violence and the workings of the criminal justice system. One of her programs received an award from the Department of Justice as the most outstanding volunteer program in the country. Ms. Kendall and her husband have worked closely with students from the Cristo Rey Jesuit High School, an amazing success story of a high school in Pilson, a low-income Latino neighborhood in Chicago.

In addition, Ms. Kendall has served as an adjunct law professor at Loyola University law school for the past 12 years. Some of her former law school students contacted me and said she was the best professor they ever had. That speaks very well of Ms. Kendall's ability not only to understand the law, but to teach it.

One of Ms. Kendall's biggest supporters is her boss—Patrick Fitzgerald—the United States Attorney in the Northern District of Illinois. He wrote me a long letter singing her praises, and he concluded:

> I can also assure you that Ginny is a warm and compassionate person who is very attentive to the human needs of those she works with and supervises. Ginny's combination of legal talents, experience as a prosecutor, supervisor and instructor, and commitment to bettering the communities most in need of help would stand her in great stead if she were selected as a federal judge in this district.

I am pleased to report that Ms. Kendall also receives high marks from her opposing counsel and has an excellent reputation in the criminal defense bar. One of her opposing counsel described her as ''honorable, decent, ethical, and someone with an ideal temperament.'' Another opposing counsel said Ms. Kendall was ''down to earth, honest, straightforward, reliable, and full of integrity.''

I was not surprised to learn that a substantial majority of the American Bar Association's judicial nomination review committee gave Ms. Kendall their highest possible rating of ''Well Qualified.'' I am confident that, as a judge, Ms. Kendall will serve with honor, courage, and distinction on the Federal bench in the Northern District of Illinois for many years to come.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

The Senator from Louisiana.

(The remarks of Ms. LANDRIEU pertaining to the introduction of S. 2171 and S. 2172 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

## HURRICANE RELIEF

Ms. LANDRIEU. Mr. President, while we did leave a lot of work to be done, I do want to thank my colleagues, particularly Chairman COCHRAN and Senator BYRD, for shepherding through a tremendous direct relief bill. That would not have happened without these two leaders. It was initially sent to us at $17 billion, with an anemic funding level for our levees. It was basically a bill that fixed Federal buildings and sent money to Federal bureaucracies and didn't reach the people directly or our cities or counties or parishes or churches or schools or hospitals. Senator COCHRAN took that bill and he stood it up and added some extraordinary pieces to it and fought like a tiger to keep that money flexible but accountable so our Governors could start rebuilding our States again, with help from the Federal Government; not just promises but real help. If it had not been for Senators COCHRAN and BYRD and the appropriators who helped to stand this bill up, we would be leaving here tonight in a much less hopeful situation.

We passed that bill out of here a little while ago. It is headed to the House of Representatives. That part is not controversial, but the process is controversial. I hope the House Members will pass that tomorrow so the people of the gulf coast, who have been waiting not for a week, not for 2 weeks, but for 4 months for this Congress to send some package of hope, other than money to FEMA, but a package of hope to our elected officials so they can get their parishes stood up, people back home, the lights turned on, the hospitals working again, the universities functioning again, and stop firing and start hiring people so we can stand up this economy.

I am hoping that tomorrow the House will act, and we will at least send this $29 billion home. Just today the President signed an $8 billion tax relief package that is full of targeted and specific tax credits and tax relief for businesses and individuals that will help as well. I thank the administration for their support of that bill.

Particularly I thank Senators BAUCUS and GRASSLEY. Senator BLANCHE LINCOLN worked very hard on many portions of this bill as a member of the Finance Committee. I could not leave tonight to go home for the holidays without thanking Senators GRASSLEY and BAUCUS. Without them, that bill never would have made it through the process. On the House side, Congressman JIM MCCRERY and my own Congressman from New Orleans, BILL JEFFERSON, had a great deal to do with the success of that bill.

As we get ready to celebrate Christmas and we remember members of our own family, my parents, my siblings, cousins, very good friends who have lost their homes and their businesses, as we remember the 250,000 homes that have been destroyed and the millions of people impacted negatively, at least this Congress can say we passed an $8 billion tax bill that will help many directly and give them immediate relief as it was signed today, and this $29 billion direct package reallocating FEMA money that is sitting in a bank account and give it to people for this Christmas holiday, and then to resolve when we get back to take up and design some new tools for reconstruction that can help in the area particularly of housing, which is such a desperate need, and reorganization of our neighborhoods and communities.

I can rest assured that the leadership in Louisiana, with the Louisiana Recovery District, led by the Governor, who appointed Norman Francis and Walter Isaacson, the two leaders of the LRA, is prepared, with our local officials, to come up with new and innovative strategies to build a great city of New Orleans again, the great parishes of Jefferson, St. Bernard, and Plaquemine, then to move over to the southwest and give the small parishes, such as Cameron, which was totally destroyed, the help they need to stand back up, so we can stand up our farms, hospitals, petrochemical industry, keep our ports open, start hiring teachers and doctors back, and start building up the 18,000 businesses that were lost. Forty-one percent of the businesses in Louisiana were destroyed by this hurricane. Our income fell 25 percent, our personal income, in a report released today.

I know everybody is tired. It has been a long day. I am ready to go home myself and have a few Christmas gifts wrapped before the weekend. But I can say that last night in New Orleans, there was the first party thrown in a long time at Gallier Hall, the old city hall. Although Senator VITTER and I couldn't be there, 500 people showed up. While there were a lot of stories about the heartache that had occurred, there was a lot of hope in the hearts of the people who came. There were former mayors and former council members and leaders of the community, Black and White, Hispanic and Asian. And despite the fact that still this Congress doesn't understand in every way why New Orleans matters, I can promise you that the spirit of the people who live in this city will not let it die, will not let south Louisiana die.

We are going to come back and work even harder to add to the package we passed tonight to get the job done and to be a model for the country, should this catastrophe ever strike another area again.

I thank my colleagues for getting through at least tonight the $29 billion of direct relief and the $8 billion tax package. When we come back, we have work to do on coastal, work to do on housing. I look forward to working with Members on both sides of the aisle to get the job done for the people of Louisiana and the gulf coast.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

## MAGEN DAVID ADOM

Mr. FRIST. For 75 years, the Magen David Adom has served as Israel's emergency relief service..

Founded in 1930 by seven Israeli doctors and a one-room emergency medical service, the MDA has grown to play a major role working alongside the Israeli Army Medical Corps in times of war and peace.

Twelve hundred employees and more than 10,000 volunteers have helped countless disaster, accident, and terrorism victims within Israel's borders.

And on battlefields and disaster areas around the world, the relief service has distinguished itself with consummate caring, professionalism and bravery.

Even the United States has been a beneficiary of the MDA's humanitarian efforts.

Most recently, in the aftermath of Hurricane Katrina MDA Israel launched an emergency mission named ''United Brotherhood'' to collect donations, funds, clothing and other equipment for the New Orleans survivors who were left homeless.

Despite their indisputably noble work, for nearly 60 years the organization has been excluded from the International Red Cross and Red Crescent Movement.

The reason? The Israeli agency has been excluded for 60 years because of its decision to retain its own protective symbol rather than adopt the Red Cross or the Red Crescent.

Finally, this month, the impasse was broken.

An overwhelming majority of the state-parties to the Geneva Conventions approved a new protective symbol—a ''Red Crystal''—to allow the relief agency to operate as a member of the global humanitarian movement.

Within Israel's territory, the agency will still use the Red Star of David.

Around the world, it will use the Red Crystal Protective Symbol, with the option of also displaying its traditional logo if the host country permits.

Aside from a few remaining formalities, the Israeli emergency service will, finally, at long last, take its place as a full member of the International Red Cross and Red Crescent Movement.

I would have liked to have seen straightforward international recognition of the traditional symbol. But the new Red Crystal is a worthy and fair compromise.

I commend the International Committee of the Red Cross and the American Red Cross for their efforts to bring this vital and life saving organization into the fold.

And I applaud the Magen David Adom for their compassionate and honorable work inspired by faith and carried out everyday with extraordinary courage.

## AVIAN FLU

Mr. FRIST. In the 20th century, three influenza pandemics. The worst of the three, the 1918 Spanish flu, killed over half-a-million Americans and more than 40 million worldwide.

Secretary Leavitt warns that if past is prologue, the world is overdue for another flu pandemic.

The avian flu spreading from East Asia to Romania and Turkey looks and acts more like the virus of 1918 than of any of its more moderate cousins.

If it achieves the final step of human-to-human transmission, the consequences could be catastrophic both in loss of human life and economic meltdown.

Recently, the Congressional Budget Office released a study which I had specifically requested on the economic impact of a flu pandemic. The CBO predicts that the American economy could suffer a $675 billion setback, a 5-percent loss in GDP, in the year a pandemic might hit.

The clock is ticking, and we need to act now.

We need to put the wheels in motion so that when and if the avian flu hits, America is prepared.

If we don't, and an avian flu epidemic comes to our shores, we will rightly be blamed for failing to do our best to protect the American people. The finger will be pointing straight at the Congress.

What we need in order to be prepared is a six-pronged approach.

We need communication, surveillance, antivirals, vaccines, research, and stockpiling and surge capacity.

This may sound like a lot of moving parts, but between our researchers, entrepreneurs, and public health experts, we have the intellect, the ingenuity, and the knowledge to get the job done.

My duty as an elected official and as a doctor is to see this through to make sure that we are adequately prepared and we can look our constituents in the eye and tell them we have done everything we can to be prepared.

Our economy, our country, and our lives are depending on it.

The President has laid out a comprehensive plan. It is our job, now, to set aside sufficient resources to tackle this looming threat.

I urge my colleagues to set aside their partisan differences and pull together to protect the American people.

The flu virus won't know who is Republican and who is Democrat, but the people who suffer will know who didn't get the job done.

We don't need to panic, but we do need to be prepared.

We need to act, and that is what we intend to do.

## AFGHANISTAN

Mr. FRIST. On Monday, Afghanistan's first democratically elected Parliament in more than 30 years convened before the eyes of the world. It was an emotional moment and one of great pride for the Afghan people.

As President Karzai told his audience of 351 new parliament members, with Vice President DICK CHENEY and his wife Lynne listening in the front row, ''This dear Afghanistan has risen again from the ashes.''

Here in the United States, we are full of hope for the Afghan people and we share in their joy.

They have suffered a long and difficult journey.

Twenty years of civil war. Nearly another decade of total repression.

But they have finally reached the shores of freedom, and the future spread out before them is one of hope, progress, and limitless possibility.

We are proud to count Afghanistan as a free country, a fellow democracy, and a friend of the United States of America.

This past year has been one of extraordinary events in the Middle East.

We have seen amazing images of people celebrating their newfound liberty—cheering, dancing and singing in the streets that they, too, are now free.

From the cedar revolution in Lebanon to the historic elections in Iraq, the winds of democratic change are blowing across Arab lands.

A new report by the highly respected human rights group Freedom House finds genuine stirrings of democratic progress: local elections in Saudi Arabia; women's new voting rights in Kuwait; improved elections in Egypt and the Palestinian territories.

The organization's director of research notes that, ''Many people predicted that American policy in Iraq and elsewhere would set back the cause of freedom. This year's results suggest that hasn't been the case.''

Indeed, I would go further to say that President Bush, our brave men and women in uniform, our coalition partners, and courageous citizens across the Middle East deserve tremendous credit for advancing the cause of freedom.

That freedom is bringing hope and optimism to millions of people long oppressed.

Last week's ABC News poll found that Iraqis believe their lives are going well, and nearly two-thirds expect things to improve in the year ahead.

Average Iraqi household incomes have skyrocketed by 60 percent in the last 20 months. Iraqis are quickly joining the swift current of modern life with cell phones and the Internet, cars, washing machines, and satellite dishes.

Another new poll in Pakistan found that in that Muslim country, public opinion toward the United States has dramatically improved.

Favorable opinion toward the United States has more than doubled since May to nearly half of those polled, while support for al-Qaida has plunged to its lowest level since 9/11.

Times are changing, and they are changing for the better.

It is true, we still face a terrorist enemy who targets innocent civilians

with bombings and beheadings, who dreams of inflicting massive violence on the American people.

These same enemies sent suicide bombers to murder innocent Jordanians only a few weeks ago. They despise freedom, and they are bending every effort to derail the democratic process.

But they will not succeed.

I am confident that America and her allies will prevail. I am confident that we will defeat the terrorist enemy and bury its twisted aims.

And all the while, we will continue to stand behind Iraq, Afghanistan and all champions of freedom as they work to secure the blessings of liberty.

## RETIREMENT OF MR. ROBERT J. SHUE

Mr. STEVENS. Mr. President, I rise to pay tribute to Robert J. Shue, a senior official in the Office of the Under Secretary of Defense, Comptroller, who in early January, 2006, will retire from a distinguished career spanning 37 years of exemplary service to America.

Mr. Shue began his career serving over 13 years in the Bureau of Economic Analysis in the Department of Commerce. He joined the Department of Defense in 1982 and quickly became a highly valuable member of the Secretary of Defense's staff.

During his 23 years in the Comptroller's office, Mr. Shue was a highly respected leader and expert on the Defense Department budget and a wide range of related matters. He played a critical role in the formulation, approval, and execution of defense budgets that produced a much-needed strengthening of America's defense posture and enabled our military to fulfill its many demanding commitments.

Mr. Shue developed and led a diverse staff of analysts and liaison officers and made his office the Defense Department's primary leader in tracking and resolving high-level budget issues. He meticulously tracked numerous and complex actions affecting the funding available to the Department. He was a pivotal leader in presenting and justifying each new budget to the Congress and the American public.

Mr. Shue was vital to the Department's analysis of congressional action on Defense Department funding and to devising strategies to influence that action. He skillfully led staff in achieving and sustaining a highly productive relationship with congressional oversight committees. This resulted in accurate and constructive information flow between Congress and the Department, helping each meet its responsibilities more successfully.

Mr. Shue produced substantial top-quality analysis on complex economic, fiscal, and budget topics for the Secretary of Defense and other senior DoD leaders. He also improved support for these leaders by initiating important management reforms that saved staff time and improved the quality of decision making data.

For his extraordinary achievements, Mr. Shue received the Presidential Rank Award for Meritorious Service. He earned the deep respect of leaders throughout the Department of Defense, in the Office of Management and Budget, and with Congress's defense oversight committees. These leaders benefited enormously from his exceptional knowledge and dedication. Mr. Shue's service has substantially helped our Nation's leaders make the wisest possible allocation of its defense resources in order to ensure America's future security.

Throughout his distinguished career, Mr. Shue has had the resolute support of his wife, Suzi, and his three children. He has earned the deep gratitude of the American people. I wish Mr. Shue and his family all the best in the coming years.

## GIVE OUR VETERANS THE CARE THEY'VE EARNED

Mr. BYRD. Mr. President, it has been 3 weeks since President Bush signed into law the 2006 spending bill providing funding for the Department of Veterans Affairs. Unfortunately, his signature was accompanied by a glaring asterisk. Instead of approving the full amount of funding that Congress provided for veterans health care, the President bottled up $1.2 billion in emergency funding that the VA urgently needs to make ends meet.

Congress added the emergency money to the bill after discovering that the President's 2006 budget request for the VA was woefully inadequate, compounding a series of errors in funding assumptions by the administration that led to a massive shortfall in VA funding in fiscal year 2005.

The $1.2 billion in emergency funding was not some kind of optional Christmas bonus for America's veterans. It is money that the VA needs to cover the baseline cost of veterans health care programs. But that money cannot be released to the VA until the President signs on the dotted line and designates it as an emergency. Unless and until the President acts, the money will simply languish in the Treasury, benefitting nobody while jeopardizing the VA's ability to meet the needs of veterans. Make no mistake about it: without this money, the VA will experience another shortfall in funding in 2006, and veterans will suffer the consequences of diminished services and longer waiting times for health care.

So why is the President sitting on this money? When Congress passed the VA funding bill, I wrote to the President urging him to release the emergency funding at the same time, thus assuring veterans that health care services will continue uninterrupted for the next year. But for some reason, the President has chosen not to release the emergency money. Instead of sending the VA the full amount of funding that Congress appropriated for veterans health care in 2006—a total of $22.5 billion—the President has chosen to hold $1.2 billion hostage at the White House.

What possible reason could the President have for refusing to relinquish this money to the VA? Does he expect America's veterans to beg for the money? Could he possibly fail to understand the importance of fully funding the VA health care program? Or could he have somehow forgotten the chaos last summer when the VA revealed that it had at least a $1 billion shortfall in health care funding for 2005, and was facing another gaping shortfall in 2006?

What kind of a signal does this send to our Nation's veterans, and to our men and women fighting in Iraq and Afghanistan?

Congress has worked diligently over the past 6 months to clean up the budget mess in the VA. As a result of amendments that I spearheaded in the Appropriations Committee and on the floor, the Senate seized the initiative to provide emergency funding to cover the shortfall that occurred in 2005 and to head off another shortfall in 2006. The administration, by contrast, had to be dragged to the table and only grudgingly owned up to the catastrophic consequences of its sloppy and inept budget estimates.

Congress has acted. Now the ball is in the President's court, and the clock is ticking. Mr. President, I again call on the President to immediately release the $1.2 billion in emergency funding for veterans' health care that Congress has provided.

## MILITARY AID TO INDONESIA

Mr. DURBIN. Mr. President, just 1 month ago, this Congress approved the Department of State, Foreign Operations, and Related Programs Appropriations Act, of 2006. President Bush signed the bill into law on November 14. The act contains strong language concerning the political and military situation in Indonesia.

Congress requested from the administration evidence of genuine progress in military reform, the protection of human rights, and accountability for crimes against humanity. It asked for such evidence before the administration made available to Indonesia any funds appropriated under the Foreign Appropriations Act for the Foreign Military Financing Program and before it issued any licenses for the export of lethal defense articles for the Indonesian Armed Forces.

Congress also gave the administration the authority to waive these conditions when it is in the interests of national security to do so, as it usually does when placing these kinds of conditions on this or any administration.

To measure the desired improvements in military reform, we asked the State Department to certify that, No. 1, the Indonesian Government is prosecuting and punishing, in a manner

proportional to the crime, members of the Armed Forces who have been credibly alleged to have committed gross violations of human rights; No. 2, at the direction of the President of Indonesia, the Armed Forces are cooperating with civilian judicial authorities and with international efforts to resolve cases of gross violations of human rights in East Timor and elsewhere; and No. 3, at the direction of the President of Indonesia, the Government of Indonesia is implementing reforms to improve civilian control of the military.

Congress does not make these requests lightly, and we based our decision on four decades of Indonesian history and U.S.-Indonesian relations. The Indonesian Armed Forces have frequently acted to forestall progress and the growth of democracy in Indonesia. Over the last decade, taking note of this, Congress has placed certain restrictions on military assistance to Indonesia, and—over that same span of time—we have seen certain positive changes in TNI behavior.

This progress is occurring—of course—in a larger context. Indonesia is making commendable progress in building one of the world's largest democracies, with democratic elections most recently in 2004.

Congress did not include the conditions on aid for Indonesia's military contained in the Foreign Operations Act to hinder the development of Indonesian democracy or punish the Indonesian people, but to assist them as they build a better future for their country.

The Indonesian Armed Forces have rightly been criticized in the past, but I also want to emphasize the changes we have seen, the positive steps Indonesia's military authorities have taken. Those steps are important and praiseworthy.

The Armed Forces have revised their old ''Dual Function'' doctrine, an artifact of the Sukarno and Suharto years, under which the Armed Forces claimed both a military and a socio political role in the life of the Indonesian state.

Under Suharto, military officers also served as parliamentarians, provincial governors, mayors, civil servants, and teachers. The Armed Forces also controlled the police. They effectively controlled giant industrial and commercial concerns such as the state oil company.

That has stopped. The TNI has stepped back from politics, and given up its reserved seats in the Indonesian Parliament.

Indonesia's military officers have shown repeatedly in recent years that they accept their place in the new Indonesia, and during their country's last two national elections, they have behaved in an exemplary fashion.

When Indonesia suffered the terrible blows inflicted upon it by last December's tsunami, the Indonesian military acted with bravery and great humanity to bring assistance to the victims of that most terrible natural disaster.

We recognize what they have done and we admire their commitment to the new and more democratic system their country is building.

Sadly, while the Indonesian Armed Forces have done a great deal, they have not done enough. Too many reasons for serious concern remain.

Six years after the TNI's involvement in East Timor's referendum on independence left 1,400 people dead, the Indonesian authorities have not brought one Indonesian officer to justice for abuses committed in the Timorese capital of Dili and elsewhere in that island nation. Indeed, some officers suspected of serious abuses have received not punishment or censure, but promotions to higher grades of their services.

There are numerous cases of human rights activists being harassed and even murdered, and we still have not seen justice for these victims.

Last year, when Indonesia's Parliament was considering a South African-style truth and reconciliation commission to discuss past atrocities, military officials objected—strongly and publicly—to the inclusion of ''truth'' in the commission's title, warning any ensuing investigation into past human rights crimes would not help the aim of building national unity.

During that debate, a retired Indonesian major general serving in Parliament, a man named Djasri Marin, said a remarkable thing. According to Australia's The Age newspaper, he said, ''If we reveal everything, it will be far from the idea of reconciliation, because there will be trials.'' He added, ''If we want to disclose everything for the sake of mere truth, it will prevent us from real reconciliation . . . Let's bury the past and step towards the future.''

It will be difficult to move into a common future in a unified fashion if the Indonesian military cannot own up to its past and take responsibility for its actions. That is one reason why we need to continue promoting positive change within the Indonesian Army. We need to continue pressing for evidence of genuine military reform, human rights protections, and accountability for crimes against humanity, just as Congress has requested.

In plain and simple language, Congress made its intent clear, asking the administration for evidence of genuine improvement in these three areas. It seems unlikely that either the President or the Secretary of State could have misunderstood or misconstrued this congressional expression of intent. Still, only a week after President Bush signed the Foreign Operations bill into law, the State Department hastily waived these conditions on military assistance, squandering an opportunity to encourage the TNI and Indonesian authorities to engage in meaningful reforms.

The waiver authority, granted to the administration by Congress, comes with implicit expectations by Congress that the administration will use it wisely and well. During the few days that passed between the time the President affixed his signature to the Foreign Appropriations Act and the moment Under Secretary of State Nicholas Burns affixed his signature to the waiver, the President has little time to act on congressional concerns.

We certainly saw no major advances in the three areas marked out by Congress. The TNI took no new steps to assure the appropriate prosecution and punishment of TNI members credibly alleged to have committed gross violations of human rights. The TNI took no new steps to show it is cooperating with civilian judicial authorities and with international efforts to resolve cases of gross violations of human rights in East Timor and elsewhere. The Indonesian authorities took no new steps to improve civilian control of the military. How could they? A week is hardly any time.

The great irony of all this is that the amount of assistance affected would have been small; small, but of great symbolic importance. I regret to say that the administration's decision to waive these conditions on national security grounds is also of great symbolic importance. Congress was promoting accountability and the rule of law in a democratic system. The Department of State has said the administration remains committed to accountability, but its actions suggest otherwise.

To waive these conditions in such a preemptory fashion raises serious questions about the relationship this administration has decided to have with Congress. In truth, it makes a mockery of the waiver process. Can we trust the administration to implement conditions like this in good faith? They waived the conditions—on supposed national security grounds—a week after the President signed the bill into law. It probably takes a week just to move a paper like that through the State Department bureaucracy.

In truth, it demeans the process, making a national security waiver a waive-it-when-you-feel-like-it waiver, rather than a last resort when other priorities intrude.

And so, I ask the administration, how shall we do business with one another in the future? Does the administration want us to eliminate such waiver authorities, so that its officers are required to give our concerns a fair hearing?

The administration needs to do more to make sure that U.S. policy and U.S. assistance to Indonesia promote TNI accountability and discourage the impunity the TNI still enjoys. I respectfully disagree with MG Djasri Marin. Nobody can step towards the future by burying the past.

We are intensely interested in Indonesia's future and the success of its democracy. Indonesia is the world's fourth most populous country, with an Islamic population larger than that of

any other country on the planet. It unwillingly hosts a number of radical terrorist groups that have killed hundreds of Indonesian citizens and hundreds of foreign visitors to Indonesia's shores. It sits astride vital trade routes linking the Middle East to the Pacific.

We want Indonesia to succeed, and we will continue to support the Indonesia Government and the Indonesian people. But uncritical assistance to the TNI will only hinder Indonesia's democratic transition and undermine our interests in that country.

We know Indonesia faces a serious terrorist threat and that the Indonesian authorities must act to protect their nation's citizens from that threat. We have urged closer U.S. cooperation with Indonesian police authorities to face down terrorism, and we support efforts to fund, train, and equip the Indonesian police's antiterrorism units. We applaud the Indonesian Government's determination to vet all members of such units to make sure they have not been involved in human rights violations.

We do not dispute that the TNI could play an important and appropriate role in Indonesia's own fight against terrorism, but we cannot ignore the institution's history of human rights abuses. We should not lend American support to an unreformed TNI, a TNI that no Indonesian democratic institution can hold accountable for human rights abuses. Congress clearly expressed its intent in this regard.

We will find ourselves on shaky ground—and place our counterterrorism strategy in the region at risk—if we do not press for reforms in an Army that considers itself above the law.

I strongly urge the State Department to reconsider its decision to waive in such a preemptory fashion the restrictions placed upon military assistance to Indonesia by this Congress. The administration needs to provide Congress with a better sense of the benchmarks it is using to encourage TNI reform and measure TNI progress. And it needs to use its waiver authority more judiciously if it expects Congress to continue granting such authority.

## DORRANCE SMITH

Mr. WARNER. Mr. President, earlier this week, the Committee on Armed Services favorably reported the nomination of Mr. Dorrance Smith to the full Senate. Mr. Smith is an experienced and highly accomplished television executive, who has been nominated to be the Assistant Secretary of Defense for Public Affairs. I have a copy of Mr. Smith's biography, and I would note that he is a four-time Emmy award winning television producer who spent 9 months in Iraq from 2003 to 2004 where he served as Senior Media Advisor to Ambassador Paul Bremer. I have met with Mr. Smith on several occasions. I believe him to be highly qualified, and I fully support his nomination.

At a full Armed Services Committee hearing on October 25, 2005, and later, at an executive session of the Armed Services Committee on December 13, at which Mr. Smith was present, he fully and respectfully answered all questions posed to him. Many questions focused on an op ed article he wrote as a private citizen that appeared in the Wall Street Journal on April 25, 2005. In this article, based on his ''in the trenches'' experience as Ambassador Bremer's senior media advisor in Baghdad, Mr. Smith questioned the practice relied on by major media outlets in the United States of airing video of insurgent attacks supplied by the Arab satellite news channel Al Jazeera. I am satisfied with Mr. Smith's responses. I would note that no major media outlet, except Al Jazeera, expressed any concern about Mr. Smith's op ed.

The post of Assistant Secretary for Public Affairs has been vacant since June 2003. Mr. Smith is an outstanding nominee. I urge favorable, rapid action by the full Senate on his nomination.

I ask unanimous consent that the above-referenced biography be printed in the RECORD.

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

DORRANCE SMITH

Dorrance Smith is a four-time Emmy award winning television producer, political consultant, and media strategist who has worked over 30 years in television and politics.

Mr. Smith spent nine months in Iraq in 2003–2004 where he served as Senior Media Adviser to Ambassador Paul Bremer. He was responsible for developing a state of the art communications facility in Baghdad for the Coalition Provisional Authority and a public diplomacy strategy for the United States government. In addition, Mr. Smith was asked to overhaul the fledgling Iraqi Media Network. By April, 2004 this effort was deemed so successful that the terrestrial channel—Al Iraqiya—was launched on satellite. For his efforts he was awarded the Secretary of Defense Medal for Exceptional Public Service.

More recently he has been a consultant to the Joint Congressional Committee on Inaugural Ceremonies and the 2004 Republican National Convention.

A four time Emmy Award winning ABC News and Sports producer, he has held a number of positions at the network, including serving as the first executive producer of ''This Week with David Brinkley.''

From 1989 until 1991, Smith was the executive producer of ABC News ''Nightline.'' During his tenure he was responsible for the weeklong ''Nightline'' series originating from South Africa, which covered the release of Nelson Mandela. The broadcasts won an Emmy award. In addition he served as executive producer of the prime time special ''Tragedy at Tiananmen—The Untold Story,'' which was honored with the duPont Columbia University Award, the Overseas Press Club Award and an Emmy. ''Nightline'' also won an Emmy in 1991 for outstanding news coverage of the Iraqi invasion of Kuwait.

Prior to his work on ''Nightline,'' Smith was the executive producer of the number one rated Sunday public affairs program, ''This Week with David Brinkley,'' a post he held from the program's inception in 1981 until 1989. During his tenure the broadcast received the first Joan Barone Award, the George Foster Peabody Award, and was named the Best National TV Interview Discussion Program by the readers of the Washington Journalism Review.

In 1991 Smith left ABC News to become Assistant to the President for Media Affairs at the White House. In this capacity Smith handled all television and radio events involving President Bush, members of the White House staff and Cabinet. In addition his office handled all regional media; coordinated media strategy for administration officials seeking confirmation; and organized the debate preparation during the 1992 political campaign.

In 2001, Smith was designated by FEMA Director Joe Allbaugh to handle all media following the events of September 11th. In this capacity Smith was responsible for FEMA's media strategy for print, radio and television. Smith organized and distributed the now famous FEMA video feeds from Ground Zero. He reorganized the Public Affairs Office to meet the post September 11th media demands.

At ABC News, Smith became executive producer of all weekend news programming in 1980. He was responsible for the production and programming of ''World News Saturday,'' ''World News Sunday,'' ''The Weekend Report,'' and ''The Health Show.''

Prior to his weekend assignment. Smith was Washington producer of ABC News' ''The Iran Crises: America Held Hostage.'' He also served as ABC News Senior Producer at the 1980 Winter Olympics, the 1984 Winter and Summer Games, and the 1988 Winter Olympics in Calgary.

From 1978–1979, Smith served as ABC News' White House producer. Smith joined ABC News as a Washington producer in 1977. Previously he was staff assistant to President Gerald Ford.

He began his broadcasting career at ABC Sports in 1973 as an assistant to the producer. In 1974 he was made Manager of Program Planning for ABC's Wide World of Sports.

Smith is a member of the Advisory Council for the George Bush Library in College Station, Texas.

He graduated from Claremont Men's College in 1973 with a Bachelor of Arts degree. He lives in McLean, Virginia.

## FIRST SESSION OF 109TH CONGRESS

Mr. ALLARD. I rise today to speak in review of the first session of this 109th Congress. I have served in the Congress since 1991, and I can say without exaggeration that this year has been the single most productive year I have participated in. As I will detail, we have passed numerous significant legislative items, some of which have languished in Congress for many years. We have stayed a determined course in the global war on terror, maintaining our commitment to our troops and to those eager to adopt a democratic way of life in place of tyranny. We have stayed a proven course to reduce the tax burden on Americans and on American business. Economic indicators in the markets, home ownership data, and employment all illustrate the wisdom of this course. This Congress has shown a very real commitment to principle. While there are those in this body and in the media who would like to deny it,

I am confident that this session of Congress will go down in history as singularly productive and representative of the will of the people.

The list of significant legislative items passed and signed into law this year is extensive. We got off on the right foot by passing a budget resolution out of the Senate on March 17, and the Congress adopted the budget conference report on April 28. This is amazingly early when compared to the struggles we have encountered in recent years. The Budget, as I have said many times before, is a vital blueprint for our work and a responsibility we must assume to serve the taxpayers. I am a member of the Senate Budget Committee and a former member of the House Budget Committee, and I am pleased to say that our chairman in the Senate has been as efficient and principled an advocate for good budgeting policy as I have ever worked with.

In previous years, we have also struggled to complete our work on appropriations legislation. The House, where appropriations measures are to originate, reported every single appropriations bill out of committee by June 21. The Senate passed every bill before October 27. Today, as we wrap up a few remaining issues, all but the Defense and Labor-HHS bills have been signed into law, but it is important to note that these bills were passed by the Senate in October. The leadership on both sides of the Capitol and the members of the various appropriations subcommittees certainly deserve accolades for making such quick work of these difficult legislative items.

Congress passed the Safe, Accountable, Flexible and Efficient Transportation Equity Act authorizing more than $286 billion of investment in our national infrastructure. The Congress also took a major step forward this year by passing a comprehensive energy policy. A comprehensive energy policy will help America meet long-term demands for energy. This policy will encourage greater domestic production, fuel diversity, research and development of new energy technologies, and an across-the-board improvement of energy infrastructure. One piece of this forward-looking policy includes the Oil Shale Development Act, which I worked on with my colleagues. This has been a prominent issue for years, but we have made the right policy decision, and it is one that will benefit millions of Americans in the decades to come. This year, Congress also addressed the energy needs of low-income families by increasing funds for the Low Income Heating Assistance Program, LIHEAP. Increased funding for this program will help those in need as winter grows more cold.

The work we have done on energy and transportation represents historic commitments to the public good. Virtually no aspect of our economic prosperity is unaffected by our fortunes in transportation and energy, and I am pleased to have been a part of these policy achievements.

After years of opposition that cost consumers untold millions, Congress finally passed the Bankruptcy Abuse Prevention and Consumer Protection Act, the first major revision to the U.S. Bankruptcy Code since 1978. This law will save approximately $3 billion a year for consumers through lower interest rates and better products and services. Consumers will further benefit from The Protection of Lawful Commerce in Arms Act and the Class Action Fairness Act. The former puts an end to the frivolous lawsuits that sought to financially drain lawful firearms manufacturers for the acts of criminals, and the latter curbs abuses in our courts that have driven costs for consumers up without benefitting the public. Frivolous lawsuits forced the firearms industry to spend nearly $200 million a year to defend itself from third-party actions and class action lawsuits had grown over 1,000 percent nationwide. Lawyers were getting rich while consumers suffered. These two bills represent a major accomplishment for both consumers and American business. We also passed the Dominican Republic-Central America-United States Free Trade Implementation Act which will benefit American business, consumers, and our neighbors in this hemisphere.

I would like to highlight another recent achievement of this administration and of this Congress that we celebrated this week when the first shipment of U.S. beef since December 2003 arrived in Japan. As my colleagues know the Japan Government recently declared that U.S. beef is every bit as safe as Japanese beef and that the beef trade may resume. This is a tribute to sound science, the hard work of our beef producers, and the diligent work of policymakers. It is with some pride that I note the first shipment of beef to be shipped to Japan was sent from Denver, CO.

In addition to these notable and historically significant accomplishments, the Congress has also passed a more humble pair of consumer-friendly items in the Junk Fax Prevention Act and The Family Entertainment and Copyright Act. These aren't the kinds of bills that the Washington, DC, crowd may see as being vital national issues, but these are issues felt deeply by our constituents and the small business community.

It cannot be overstated that these policies have fostered continued economic growth and prosperity. More than 56,000 jobs were created in our economy in October this year, and more than 4.2 million jobs have been created sine May 2003. Unemployment continues to steadily decline as more Americans than ever are working. This is a remarkable feat by policymakers, investors, small businesspeople, and families across the country. Our economy is strong.

Congress continued the national commitment to our men and women in uniform in a variety of ways this year. Though we await completion on the Department of Defense appropriations bill, we have already passed into law more than $80 billion for the further prosecution of the war in Iraq, the reconstruction of Afghanistan, and aid for our international partners. We have increased the pay of our service men and women with an across-the-board 3.1 percent raise, increased housing allowances, increased bonuses for additional retention and recruiting, and increased specific bonuses for those deployed overseas. We have also increased the maximum life insurance allowed for an insured veteran or service member and secured more than $140 million for body armor and personal protection.

I am particularly pleased with the steps we have taken to support our troops. Too often policymakers talk the talk without regard to action. It is my hope that we will continue to be responsive and supportive of our troops. The people of the United States are grateful for their dedication and courage. We tackled important veterans health issues this year, as well, by passing the Veterans Medical Services Supplemental. This legislation provided $1.5 billion to meet our commitment to those who have served our Nation.

The same Defense supplemental appropriations bill included almost a billion dollars in aid for those impacted by the tsunami in the Indian Ocean almost a year ago, including more than $650 million for the Recovery and Reconstruction Fund.

Though not a legislative accomplishment, this would be a good time to mention the tremendous yield we have seen from the years of work by this administration, the military, and Congress. This year started with Parliamentary elections in Iraq to democratically select those responsible for drafting the framework of a free Iraq. In October, the Iraqi people approved their new constitution, and the mechanisms of democracy are still working. In Afghanistan, after many years of turmoil, we also witnessed the free election of a Prime Minister and of the new Parliament. We must stay this course.

In the past year, we have also enacted a series of legislative proposals to provide relief to families in the gulf region. The unprecedented impact of Hurricane Katrina demanded an immediate response. The Gulf Coast Emergency Water Infrastructure Assistance Act, The Community Disaster Loan Act, The Natural Disaster Student Aid Fairness Act, Pell Grant Hurricane and Disaster Relief Act, Temporary Assistance for Needy Families Emergency Response and Recovery Act, and Katrina Tax Relief Act, among others, put us on the road to recovery. The pair of emergency supplemental appropriations bills that Congress passed total well over $65 billion and have provided needed infrastructure, security,

and humanitarian relief. While there is a great deal of work to be done in the Gulf States, Congress has and will continue to demonstrate an ongoing commitment to this region.

Congress also engaged in one of the most important debates we could hope to have as far as our national security is concerned, that of enhancing the security of our borders. This year's Homeland Security Appropriations Act provides unprecedented funding to protect our borders from those who wish to enter illegally. This year we passed more than $31 billion in new budget authority for the Department of Homeland Security, increasing border security accounts, providing an additional 1,000 border patrol agents, and providing more 220 detention beds.

Among the most high-profile issues of the year were the nominations, hearings, and thus far one confirmation for the U.S. Supreme Court. Not only did the Senate confirm John Roberts to the Court, but Justice Roberts was also named to be the new Chief Justice of the Supreme Court. In the time since Chief Justice Roberts came before the Senate, we have also worked through a pair of nominations, one of which we will take up as our first order of business in the new year. The Roberts nomination demonstrated the value of our system and all of its various parts, working together for a greater good. I look forward to the timely hearings on Judge Alito's nomination and an up-or-down vote on his nomination.

This has been an amazing year of accomplishment for the Congress. As I said earlier, there has not been a more productive year in my time here. As proud as I am of these many accomplishments I would also like to discuss a few accomplishments a little closer to my home, the State of Colorado, where we have had a pretty big year, as well.

One of the ongoing projects I have worked on for many years now is the cleanup of Rocky Flats. This year, we secured more than $560 million for the final stages of the cleanup. Contrary to what many may expect, this cleanup was completed ahead of time and below projected costs, serving both the region and the taxpayer by cleaning up this facility.

Another long-term project that I have worked on is the destruction of chemical weapons at the Pueblo Depot. By working with the Department of Defense, we have increased funding and maintained good management principles to meet our treaty obligations in the destruction of more than three-quarters of a million chemical weapons on site.

Just down the road from Pueblo is Fort Carson. I recently held a town meeting at Fort Carson to discuss a variety of issues important to that base and to that community, including the political process that accompanies BRAC. We secured more than $120 million in military construction funds for new barracks and training at the facility as well as securing funds to prevent encroachment at the base. Even further on up the road is another jewel in America's military infrastructure, the U.S. Air Force Academy. Our ongoing efforts to assess progress and address problems at the Academy have been very productive thus far, and we secured $18 million to upgrade academic facilities and family housing this year. It is with some pleasure that I can also say I attended all four board of visitor meetings at the academy this year.

This has also been a year of accomplishment for Colorado's space industry. This year we added $60 million for military satellite projects in Colorado, secured $12 million for the space control facility at Peterson Air Force Base, and $6 million for the space warning facility in Greeley. In keeping with these efforts to modernize and expand our posture in space I held four Space Power Caucus events. Space is indeed a great frontier, and it is one where we must maintain an aggressive stance. Just as it is important that the military sector be moving forward in space, it is equally vital that our workforce and our students learn about space science and perform cutting-edge research. This year we secured more than $10,000,000 for student space programs at the University of Colorado, Colorado State University, the Challenger Learning Center, and the Space Foundation. The students who will benefit from these programs are our future.

Students in my home State will likewise benefit from our continued support of the University of Colorado's Center for Micro and Nano-technology, which will receive three-quarters of a million dollars for cutting edge scientific research that dwells on the cutting edge. Congress has seen fit to support Colorado State University's Pueblo campus, as well, providing $250,000 for the Western Forensic Law Enforcement Training Center.

I spoke earlier of the importance of the highway bill and its impact on our Nation's infrastructure. In Colorado, this will translate in to a variety of projects. We secured $80,000,000 for the T-Rex highway improvement program, $5 million for the west corridor, and $9 million for the Colorado Association of Transit Agencies, a statewide coalition of agencies focused on the future of mass transit in my home State. Our successful year of investment in infrastructure includes a variety of projects around the State, including projects such as the Rio Grande bike trail in Garfield County, funding for the Pikes Peak Highway, State Highway 145 from Dolores to Stoner, the Ports-to-Plains Corridor, and Frisco's West Main Street.

In the Agriculture Appropriations Act we secured more than $300,000 for the Cooperative State Research, Education and Extension Services for the Russian Wheat Aphid Resistance, Stress Tolerance and Quality Enhancement Project, more than 800,000 for infectious disease research to the Center for Economically Important Infectious Animal Diseases at Colorado State University, and almost $900,000 for the National Beef Cattle Evaluation Consortium, comprised of Colorado State University in Fort Collins, Cornell University, and the University of Georgia.

Our efforts this year also yielded $400,000 for tamarisk eradication efforts, more than $10,000,000 for new science and technology facility at the National Renewable Energy Laboratory, and $10,000,000 for design and construction of a new NREL Administrative Facility, and more than $55,000,000 for the Animas-La Plata project. In addition to securing funding to help my home State combat chronic wasting disease, we worked this year to direct the Animal Plant Health Inspection Service at USDA to begin to promulgate rules for dealing with this disease.

Another ongoing project that I have been pleased to work on with my colleagues is the modernization and expansion of the Centers for Disease Control lab in Ft. Collins. This facility, which provides vital research on vector-borne disease, will receive $24,000,000 this year.

We have been very fortunate in the State of Colorado. I appreciate the efforts of my colleagues in recognizing the vital research, military, and educational facilities housed in Colorado.

On a more personal note, this year I opened a new State office in Durango, CO. I would like to urge colleagues, if they have not been, to pay a visit to this charming mountain community in southwestern Colorado. Durango offers terrific recreation in summer and winter, and I look forward to being able to enhance my constituent service with this new office.

Each of my State offices and my office here in Washington joined with the University of Denver and the University of Northern Colorado this year to host the sixth annual Allard Capitol Conference. This year, we hosted more than 100 Colorado citizens for 3 days of civic learning and participation. This annual conference is one of the most enjoyable things I am able to do with constituents each year.

It has been an extraordinary year of accomplishment for the Congress and for Colorado. We have a tremendous amount of inertia going in to the second half of the 109th Congress, and I look forward to the new year and all of its challenges.

## CLERICAL ERROR CLARIFICATION

Mr. GREGG. Mr. President, I submit for the RECORD a clarification to the conference report to accompany S. 1932, the Deficit Reduction Omnibus Reconciliation Act, to correct a clerical error in drafting in Section 11101(a)(2) regarding bankruptcy fees. The language, ''in paragraph (2) by striking '$1,000' and inserting '$2,750' '', refers to the wrong subsection of the bankruptcy code. The language should read, ''in paragraph (3) by striking

'$1,000' and inserting '$2,750' ''. Any reading of the language in context would indicate this clerical error, as the numerical references in the language are illogical otherwise. We will make the technical correction at the appropriate time.

## REAUTHORIZATION OF THE TRAFFICKING VICTIMS PROTECTION

Mrs. CLINTON. Mr. President, I rise today to speak in support of the reauthorization of the Trafficking Victims Protection Act.

The scourge of trafficking in women and children was a priority for me as First Lady and continues to be a priority for me as a Senator. Since the United Nations Fourth World Conference on Women in 1995, I have been working to raise awareness of the heinous practice of buying and selling women and children like commodities. I have seen the devastation that it causes, and the lives it ruins. I have met with the families from Eastern and Central Europe, who, with tears in their eyes, pleaded with me to help them find lost ones who had been stolen from them, and I have met with the victims, including a 12-year-old girl in Thailand who was dying of AIDS after being sold twice by her family. This barbaric practice has caused far too many to exist in a perpetual state of fear and vulnerability, and we must do everything in our power to bring the scourge of trafficking out of the shadows and to the attention of the world.

I am proud to say that the United States has, for the past decade, been the leader in trying to persuade the rest of the world to eradicate this abhorrent practice. As the Clinton administration increased the antitrafficking activities of our Government through programs at the State Department and the Department of Justice, Congress was developing legislation to eradicate trafficking. We worked with the late Senator Wellstone, his Republican cosponsor, Senator BROWNBACK, and Congressman CHRIS SMITH and former Congressman Sam Gejdenson in the House, to introduce the first comprehensive antitrafficking bill in Congress. This culminated in the passage of the Victims of Trafficking and Violence Protection Act of 2000. I believed then, and I believe now, that this is one of the Clinton administration's greatest achievements and one of the most important parts of Senator Wellstone's legacy. That law has meant the difference between freedom and enslavement for unknown numbers of potential trafficking victims, and this reauthorization provides us with the opportunity to strengthen its ability to help those who have been trafficked, and I would like to thank Senator BROWNBACK and Representative SMITH, my colleagues on the Helsinki Commission, for their continued commitment to this act since its initial passage.

I am proud to see that this reauthorization enhances the 3 P's strategy—prevention of trafficking, prosecution of those that engage in these acts, and protection of the vulnerable individuals who have been trafficked—that we developed in the Clinton administration. It gives the Justice Department the authority to pursue extraterritorial prosecutions of Federal employees or those accompanying them if they engage in trafficking activities. It encourages the prevention of trafficking by requiring organizations or contractors engaged in U.S.-supported peacekeeping efforts to have antitrafficking policies in place. And it will protect those who have been trafficked overseas by increasing funding for programs like residential treatment facilities.

But there is still so much work to be done. Although reliable statistics are difficult to find, we know that 800,000 individuals—the vast majority of whom are women and children—are trafficked from one country to another every year, with 15,000 being trafficked to the United States. The FBI estimates that trafficking generates $9.5 billion annually for organized crime syndicates around the world.

I am deeply concerned about the growing domestic commercial sex trade, and I believe that we need to increase funding and target efforts to end all forms of exploitation. Any expansion of our focus must not dilute our commitment to eradicating human trafficking in all its forms in the United States, nor detract from the progress we have made in increasing prosecutions and working with law enforcement agencies. We must ensure that our government has all the resources it needs to make inroads against these awful acts on our own soil.

In the fight against trafficking in persons, patience simply is not an option. I look forward to continuing to work with my colleagues to end this barbaric practice in both the United States and around the world, because this is not about politics, but about what we all share: universal freedom and universal human rights.

## KATRINA RECOVERY EFFORTS

Mr. KENNEDY. Mr. President, this holiday season is a time for families to come together, reflect on the year's challenges and opportunities, and give thanks for all that has been accomplished. It is also a time to take action to help those less fortunate.

The year 2005 was a year of great challenges, and among the greatest were the hurricanes that ripped through the gulf coast.

The magnitude of Hurricane Katrina was unprecedented. Its aftermath brought us images that we thought we would never see in America—lives lost, communities destroyed, families uprooted.

The toll was particularly devastating for hundreds of thousands of young children and students torn from the surroundings and institutions they depend on, and I'd like to spend a few moments discussing this aspect of the recovery effort.

We are all familiar with the devastation that past hurricanes have caused. Some have temporarily closed schools and colleges. In the aftermath of Hurricane Andrew in 1992, the Army, Navy, and National Guard joined in helping to repair classrooms and reopen school doors in about 3 weeks. Last year, Florida schools damaged by Hurricane Charley reopened within a month, and students were quickly back on track in their classrooms.

But Hurricane Katrina caused vastly greater devastation, especially in Louisiana, Mississippi, and Alabama. More than 700 schools and 30 colleges and universities were damaged or destroyed. Almost all have been closed, at least temporarily, and many will not open until January at the earliest. Some are in danger of never reopening.

The number of students affected is staggering. More than 370,000 elementary, middle, and high school students were displaced. Over 100,000 college students were affected by the disaster. And 18,500 Head Start or Early Head Start children were uprooted from programs.

These are not just statistics. These are real people whose lives have been changed forever.

Hurricane Katrina reminded us that we are all part of a single American family. And we have a responsibility to help members of that family when they are in need.

For too many weeks, our friends in the gulf region have waited for Congress to provide help in rebuilding their lives and their communities. Today, I am pleased that we will take an important step in actually providing the assistance so obviously needed.

The Katrina and Rita relief provisions in the conference report passed by the Senate today include several proposals developed by Senator ENZI and myself to help the children and students affected by these hurricanes.

It includes assistance to ensure that the youngest children uprooted by these tragic storms receive the services, help, and support they need. The bill dedicates funding to provide access to Head Start preschool programs and child care.

It provides much-needed relief for the public and private schools across the country that generously opened their doors to schoolchildren whose lives were turned upside-down by these disasters. These schools provided classrooms, teachers, and services for all of these students, and did so without a penny from the Federal Government.

It also includes relief for colleges in the affected areas, and ensures that college students displaced by the hurricane will receive the financial aid they need to stay in school and continue working toward their degree. Several colleges in Louisiana are in danger of

closing their doors for good, unless they receive this critical assistance soon. The funding approved by the Senate today may not be enough to guarantee their future, but at least it offers much needed support.

This relief is long overdue, and I commend the Senate for taking action.

When these devastating storms struck, the entire nation responded in a way that is as caring and as generous as the American spirit.

Thousands volunteered to help. Families opened their homes. School districts across the country accommodated displaced students in their schools. Colleges and universities graciously opened their doors.

The Nation is grateful to all who did so much to help respond in the tragic aftermath of the hurricanes. We are grateful to the school principals and superintendents and the college presidents and deans who served as first-Responders and helped so many students continue their education.

But these educators need help as they struggle to accommodate the students. Congress must do its part to help these devastated communities get back on their feet and enable students to return to their schools. We also need to help the institutions that are laboring so hard to provide a safety net for these children and their families.

That is why the proposals in this conference report are so important. This funding will rehabilitate and strengthen the educational institutions that serve and assist children and students affected by Hurricanes Katrina and Rita, and help meet the needs of early education, elementary and secondary education, and higher education.

Thousands of young children affected by the storms need to return home to safe and healthy settings. They need good early childhood programs in adequate facilities. Their families need health and counseling services to cope with the trauma brought on by the storms.

The bill facilitates enrollment in Head Start and Early Head Start by waiving income eligibility and other requirements, so that families affected by Katrina will be able to enroll their children more easily. It provides $90 million for affected Head Start centers to provide preschool opportunities to displaced students. It also provides additional support and guidance to meet the emotional needs of children and their families.

We are reminded by this disaster that schools are the heart of local communities across America. When schools open, families return, businesses return, and lives begin to return to normal. So I am pleased that the report provides $750 million for special school reopening grants to districts and communities significantly affected by Hurricane Katrina.

These grants will aid in the effort to retain highly qualified teachers, recover lost data, establish temporary facilities, and take other steps necessary to reopen the schools.

The bill also responds to the efforts of schools in Texas, Georgia, Florida, and other States that opened their doors to displaced students. It provides $645 million for public and private schools that have enrolled displaced students, in order to ease the transition of students into new schools, support basic instruction, purchase textbooks and materials, and temporarily expand facilities to avoid overcrowding.

Both public and private schools can benefit from this aid, but the proposal sets ideology aside and rejects the attempts by the House and the administration to provide this aid in the form of vouchers to parents through a 1–800 number. Instead, the bill uses the mechanisms of current law to provide aid for students in private schools through the public school system.

The funds can only be used for the same list of allowable educational services as for public schools and so cannot and should not be used for religious activities. It makes clear that all of the aid is temporary, and is being provided in response to the extraordinary circumstances resulting from these disasters. It is not a precedent for future policymaking.

In addition, to help meet the demand for qualified teachers, the bill authorizes the Secretary of Education to encourage states to extend temporary reciprocity for the certification of teachers and para-professionals across state lines. Teachers certified as highly qualified in one state should be recognized as meeting this standard in other States as well.

To ease the burden faced by colleges and universities in the declared disaster area, the bill also authorizes the Secretary of Education to waive various Federal reporting requirements. It includes $200 million for student aid and waives the institutional matching requirement for students affected by the hurricane. These funds can also be used to help institutions in Louisiana rebuild their facilities and welcome their students home. Our priority should be to help these colleges and universities move into the future.

This relief package is a welcome step to help life return to normal for the hundreds of thousands of children and students uprooted by these deadly storms. We begin today to help the gulf coast communities rebuild and re-open their schools and colleges.

We need to continue this important work in the coming weeks, by assessing the ongoing needs of those affected by the hurricanes, and doing all that is necessary to help them rebuild their lives.

## FAILURE OF HOUSE OF REPRESENTATIVES TO PASS S. 1558

Mr. LEAHY. I am disappointed that the House of Representatives has failed to act on S. 1558, which passed the Senate on November 10. This bill was introduced by Senators COLLINS and LIEBERMAN. I worked with them to amend it to extend for 4 years the ''sunset'' of a provision first enacted in the Identity Theft and Assumption Deterrence Act of 1998 that grants the Judicial Conference of the United States the authority to redact information from a judge's mandatory financial disclosure in circumstances in which it is determined that the release of the information could endanger the filer or the filer's family. The bill, as amended, also extends the protections of this provision to the family members of filers.

Like the more comprehensive court security measure Senator SPECTER and I have introduced, S, 1968, the Court Security Improvement Act of 2005, CSIA, from which it is drawn, S. 1558 provides judges and their families with needed security by extending the judges' redaction authority without interruption and expanding it to their families. It also strikes the right balance with the need for continuing congressional oversight to prevent the misuse of this redaction authority, which has been a matter of some concern to me. I appreciate that the Judicial Conference is seeking to improve its practices and the Senate passed S. 1558 because none of us wants to see judges or their families endangered. Now, because of the failure of the House to pass S. 1558 and enact the reauthorization of redaction authority for another 4-year period, these protections will lapse at the end of the year.

## EPA'S PROPOSED PARTICULATE MATTER STANDARDS

Mr. JEFFORDS. Mr. President, I rise to speak on behalf of myself and Senators CARPER, BOXER, CLINTON, LAUTENBERG, LIEBERMAN, and OBAMA.

Last night, the U.S. Environmental Protection Agency proposed new National Ambient Air Quality Standards for fine particulate matter. The National Ambient Air Quality Standards are the cornerstone of the Clean Air Act. These standards must be set at a level ''requisite to public health'' with ''an adequate margin of safety.'' They are to be based on the ''latest scientific knowledge,'' and EPA is prohibited from considering costs in setting them. Their fundamental purpose is to ensure that our air is safe to breathe.

We have known for years that fine particle pollution causes premature death, increased asthma attacks, and numerous other health effects. In 1997, EPA revised the particulate matter standard on the basis of that evidence. The Clean Air Act directs that EPA, together with an independent scientific review panel, examine the available scientific evidence and determine whether the existing standard needs to be changed. The proposal by EPA last night, coming almost 5 years late, represents the end result of that effort. Unfortunately, EPA selected the weakest option available to it.

In determining whether to revise the standard, EPA reviewed the more than

2000 scientific studies that have been published since 1996. These studies confirm the earlier research results that demonstrate the strong relationship between particle pollution and illness, hospitalization, and premature death. Some of the more recent studies show the strong relationship between particle pollution and cardiovascular illnesses that trigger heart attacks and strokes. These studies also indicate a stronger relationship between short term PM exposure and health effects than was evident in 1997.

Under the Clean Air Act, EPA is required to consider the advice of an independent scientific review panel, the Clean Air Science Advisory Committee, CASAC, which must include at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies. That body exhaustively reviewed the current body of scientific evidence and concluded that EPA must revise both its short term—24 hour or daily—PM standard, and its annual PM standard. Unfortunately, EPA chose to disregard that advice and proposed to only revise the daily standard. And in making its proposal on the 24-hour standard, it choose the highest level recommended by CASAC—35 micrograms per cubic meter.

It is apparent that the level proposed by EPA was not based entirely on the latest scientific knowledge. The level of the standard proposed by EPA will leave millions of Americans unprotected. It will also require few, if any, additional controls to be put in place. EPA chose the least protective approach that it could and disregarded the advice of the CASAC by failing to revise the annual standard. Had EPA followed the recommendations of CASAC, it could have proposed options that would have prevented more than twice as many deaths. That is not even considering the Clean Air Act requirement for an ''adequate margin of safety'' that considers ''sensitive subpopulations.''

Playing politics with public health is unconscionable. When these standards were last revised in 1997, they were subject to multiyear litigation battle. Ultimately the Supreme Court unanimously upheld the 1997 standards and the scientific process that was used to develop them. The science we have available to us today is even clearer than it was then. Fine particle pollution kills people at levels below the existing standards. We need to change these standards and heed the advice of our best and brightest scientific minds. We need to let them tell us when the air is safe to breathe. When EPA makes its final decision in September regarding a new national ambient air quality standard, it must do so based on scientific, rather than political considerations. The very lives of our citizens depend on it.

## CAPITAL PUNISHMENT

Mr. FEINGOLD. Mr. President, we recently passed a disturbing milestone in this country. One morning just a few weeks ago in North Carolina, Kenneth Lee Boyd was put to death by lethal injection. Mr. Boyd's was the one thousandth execution since the death penalty was reinstated in 1976. While a jury decided that his guilt was not in doubt, confidence in the extraordinary punishment he received increasingly is.

Across the Nation, people are reconsidering capital punishment. Recent polls, jury verdicts, and actions taken by all three branches of government in States across the country reflect the changing attitudes about the death penalty in this country. Americans are increasingly concerned about the use of this very final punishment.

With advances in DNA technology, numerous exonerations of people on death row, and new revelations that innocent people have actually been put to death, more and more people are questioning the accuracy and fairness of the administration of the death penalty. In addition, more and more people have qualms about the very concept of state-sponsored executions. This trend is a hopeful sign, as I believe there continue to be numerous moral, ethical and legal problems with the death penalty.

According to a series of Gallup polls, opposition to the death penalty has grown from 13 percent of Americans in 1995 to 30 percent in October of this year. Think about that. In just 10 years, we went from a vast majority of Americans supporting the death penalty, to nearly one-third now opposing it. That is the highest level of opposition since its reinstatement almost 30 years ago. And a CBS News poll from April indicates that when people were asked whether they prefer the death penalty or life without parole for individuals convicted of murder, only 39 percent supported the death penalty.

Evidence of the changing attitudes about the death penalty can be seen across America. The U.S. Conference of Catholic Bishops recently launched a campaign to end the use of the death penalty. In New York earlier this year, the State's highest court struck down the State's capital punishment statute, which had passed only 10 years earlier in 1995. The legislature then declined to reinstate the law, making New York the first state to abandon capital punishment since 1976. That is a remarkable sign of progress.

Meanwhile, just over the river in Virginia, the death penalty was a key issue in the last gubernatorial election. Tim Kaine, the current Lieutenant Governor, has long been personally opposed to the death penalty, although he pledged to enforce the law in Virginia. In the final weeks before the election, his opponent Jerry Kilgore began an ad campaign that heavily criticized Kaine's opposition to the death penalty. Kilgore strongly supports capital punishment and during the campaign he said he would push to expand its use in Virginia. But when Kilgore went after Kaine on the death penalty, Virginians did not take the bait. Despite Kilgore's attack ads, the citizens of Virginia elected Kaine Governor, and he will become Virginia's Governor in January.

I think what happened in Virginia strongly demonstrates how far we have come. This issue can no longer be used as a political grenade. A majority of Americans may not yet oppose the death penalty, but the electorate understands what a serious issue this is, and it will not stand for capital punishment to be exploited for political purposes.

Yet another example of the seriousness with which citizens and politicians alike are treating this .issue is outgoing Virginia Governor Mark Warner's recent commutation of the sentence of Robin Lovitt to life in prison. Mr. Lovitt was convicted of robbery and murder and sentenced to death, but before he had exhausted all judicial remedies, a court employee destroyed the physical evidence in his case—the very evidence that Lovitt said would exonerate him if subjected to new advanced DNA analysis. Under Virginia law, the Commonwealth must keep all physical evidence until the defendant has exhausted all posttrial remedies. Although Governor Warner is a death penalty supporter, he decided that he simply could not put a man to death when the State itself had destroyed his ability to prove his innocence. As he put it, he believed that the case ''require[d] executive intervention to reaffirm public confidence in our justice system.'' In his almost 4 years as Governor, this was the first time Governor Warner granted a clemency petition.

On the other side of the country, we have seen a great deal of public debate as Governor Schwarzenegger considered a clemency petition for Stanley Tookie Williams. Williams was a founding member of the Crips gang and was convicted of four murders in 1981. During his years in prison, however, Williams, by all accounts, worked to turn his life around. He denounced gang violence, tried to keep kids out of gangs, and even helped broker peace deals between rival gangs. Governor Schwarzenegger denied clemency and refused to commute Mr. Williams' death sentence to life without parole. The State of California put Mr. Williams to death on December 13.

Much more is happening at the State level that has not received nearly as much attention. North Carolina and California recently created commissions to study the administration of the death penalty in their respective States, joining many other states that have already done so. Moratoriums on executions remain in place in Illinois and New Jersey, and are under consideration in other States. Many State legislatures have worked to address flaws in their systems or even rejected

efforts to reinstate the death penalty. State courts have limited or banned the death penalty, including the Kansas Supreme Court, which in 2001 ruled that State's death penalty law unconstitutional. That case, Kansas v. Marsh, was heard in the U.S. Supreme Court just last week. Even in Texas, the State that executes by far the most people every year, a life-without-parole sentence was recently enacted, giving juries a strong alternative to the death penalty. And Texas Governor Perry also established a Criminal Justice Advisory Council to review the State's capital punishment procedures.

These signs of progress have coincided with critical new restraints imposed by the Supreme Court, which in recent years has issued two key rulings that limited the application of the death penalty. In 2002, the Court held in Atkins v. Virginia that applying the death penalty to mentally retarded defendants was excessive and constituted cruel and unusual punishment in violation of the Eighth Amendment. And just this year, in Roper v. Simmons, the Court made the same decision with regard to individuals who commit crimes before their eighteenth birthday. Capital punishment for mentally retarded defendants and juveniles is now unconstitutional in the United States.

Mr. President, as I mentioned before, there are many reasons people are questioning the death penalty in ever-increasing numbers. A common concern is that innocent people end up on death row, and we cannot tolerate errors when the state is imposing such a final penalty. More than 120 people on death row have been exonerated and released. Think about that. Just over one thousand people have been executed in the era of the modem death penalty, while a number equaling 12 percent of those executed have been exonerated. Those are not good odds, Mr. President.

Even more horrific is the prospect that we have already executed individuals who were, in fact, innocent. It saddens me greatly to report that information has come to light strongly demonstrating that two men put to death in this country in the 1990s may well have been innocent. That sends chills down my spine, as I'm sure it must for my colleagues.

Earlier this year in Missouri, local prosecutors in St. Louis reopened the case of a 1980 murder because the evidence against the man convicted of the crime had fallen apart. That man, Larry Griffin, was sentenced to death, and he was executed by the State of Missouri more than 10 years ago. Yet now, 25 years after the crime and more than 10 years after his execution, very serious questions about his guilt are being raised. CNN recently reported that a University of Michigan law professor who researched the case found that the first police officer on the scene now claims the person who testified as an eyewitness gave false testimony. A victim of the shooting, who was never contacted before Mr. Griffin's original trial, stated that the person claiming to be an eyewitness at the original trial was not present at the scene of the crime. Samuel Gross, the Michigan law professor who supervised the new investigation of the case that led to the St. Louis Circuit Attorney's decision, was quoted as saying with regard to this man's innocence: ''There's no case that I know of where the evidence that's been produced in public is as strong as what we see here.''

The second case is from Texas, where a young man named Ruben Cantu was executed in 1993. He was just seventeen at the time of the murder for which he was executed. Again, in this case, the only eyewitness to the crime has recanted his statement, and told the Houston Chronicle that Cantu was innocent. The Houston Chronicle also reported that the judge, prosecutor, head juror, and defense attorney have since realized that, as the newspaper put it, ''his conviction seems to have been built on omission and lies.''

The loss of one innocent life through capital punishment should be enough to force all of us to stop and reconsider this penalty. These cases illustrate the grave danger in imposing the death penalty. Whatever the new evidence that might come to light, it doesn't matter. There's no going back.

Mr. President, I know that many people in this country say that it doesn't matter what other countries do or say, that we should not look abroad for ideas. But the fact is that attitudes are changing around the world about capital punishment, and the United States is in poor company internationally on this issue. We are the only Western democracy ranked in the top ten countries in executions in 2004. And increasingly, other countries are rejecting capital punishment. Over the past 10 years, according to Amnesty International, an average of three countries per year has abolished the death penalty.

In closing, I urge my colleagues to take a long, hard look at capital punishment. Years of study have shown that the death penalty does little to deter crime, and that defendants' likelihood of being sentenced to death depends heavily on whether they are rich or poor, and what race their victims were. We have experienced again and again the risks, and realities, of innocent people being sentenced to death. I believe that is it wrong for the State to put people to death, especially when we can achieve our public safety goals by sentencing them to life without parole. It is heartening to see so many people reconsidering the death penalty, and it is my hope that in time we will end it in the United States.

I yield the floor.

## IRAQ

Mr. LAUTENBERG. Mr. President, over the weekend the Senate passed my resolution, S. Res. 338, to honor the first 2,152 troops who have died in Iraq and Afghanistan by listing their names and hometowns in the CONGRESSIONAL RECORD. They deserve this tribute for their valiant support of their military obligations.

I appreciate the support of my colleagues on this measure. It is a symbolic way for us to honor each of our fallen heroes individually.

But there is another way we can honor their memory. And that is to be honest and truthful about the war in which they fought—Iraq.

The President has taken small steps toward candor on Iraq, but the denial of reality is still apparent in his speeches.

To make matters worse, the President is still making insulting insinuations about those who criticize his Iraq policy. In his Sunday night address to the nation, President Bush said:

> Some look at the challenges in Iraq and conclude that the war is lost, and not worth another dime or another day.

Does this statement suggest that those who disagree with the President would not even spend a trivial amount to protect America's international interests?

The President states that the sacrifices in Iraq are made in dimes and days. But what about lives?

What about the more than two American lives given each day so far this year in Iraq? The President didn't mention that.

I have gone to many memorial services and funerals for brave, young Americans from New Jersey who died in Iraq. Seventy-three soldiers with ties to New Jersey have died in Iraq and Afghanistan.

I have also visited Walter Reed Army Hospital here in Washington several times, and I have been struck by the incredible resilience and dedication to country of those young Americans.

While these brave men and women put their lives on the line, this administration bypasses reality.

Today we know that Iraq did not pose an imminent threat to our national security. We know that there were not weapons of mass destruction. We also learned that Iraq had nothinq to do with 9/11 and actually had an adversarial relationship with al-Qaida.

There is no doubt Saddam Hussein was a maniacal dictator who killed, tortured, and suppressed his own people.

But President Bush did not call for an invasion of Iraq based on Saddam's treatment of his own people. President Bush called for war with Iraq because he argued that Saddam was a direct threat to the American people.

That turned out to be untrue, plain and simple.

Now, in the wake of the administration's mishandling of this war, much of Iraq has turned into a magnet for terrorists and extremists. President Bush continues to say that Iraq is a ''central

front of the war on terror.'' But the reality is that Iraq has become a terrorist front as a result of President Bush's mistakes.

Our 160,000 troops in Iraq have become a tarqet for cowardly insurgents who attack us with roadside bombs and suicide attacks.

This is not progress.

Despite claims by supporters of the President's Iraq policy we are not making sufficient progress in Iraq. Unfortunately, we may be sinking deeper into a quaqmire.

We have not made progress because the President has never put together a coherent plan for postinvasion Iraq.

For evidence of this, one need only look at the infamous speech aboard the aircraft carrier on May 1, 2003, when President Bush declared ''mission accomplished.''

''Mission accomplished'' sure sounded like the job was done and our troops can begin to come home.

But we now know the mission was not accomplished on May 1, 2003.

More recently, over the past few weeks, President Bush has been making speeches about Iraq in an attempt to reshape people's perceptions of the war. The President knows that polls show that a majority of the American people do not believe that the war is being managed properly.

President Bush thinks if something is repeated often enough, people will eventually believe it.

But the American people will not stand still while we lose more of our courageous young men and women.

We all pray that Thursday's Iraqi elections will lead to a viable government that will create stability. It could be a critical first step.

But where are the plans if the elections do not lead to success? How long until more lost lives exhaust the patience and will of the American people?

In the meantime, supporters of the President point to evidence of significant progress as more satellite dishes appear on Iraqi roofs and cell phones are in Iraqi hands. But while the anxiety and fear existing in thousands of American families continues, Iraqi satellite dishes and cell phones do not suggest relief.

It seems possible to get an honest assessment from the administration of any future plans to get our people home.

That probably explains why some of President Bush's statements on Iraq have been contradicted by current military leaders.

For example, last June President Bush said there were 160,000 Iraqi troops trained and ready to fight. But then, a few months later, Gen. Georqe W. Casey, Jr.—the top U.S. commander in Iraq—said only one Iraqi battalion was able to conduct operations independently of American forces. That means less than a thousand Iraqi soldiers were actually equipped to fight without our help.

And we should pay close attention to what the former head of U.S. Central Command—retired Gen. Anthony Zinni—said about this Iraq operation.

General Zinni has described the poor planning for the Iraq war as, ''at a minimum true dereliction, negligence and irresponsibility, at worse, lying, incompetence and corruption.''

General Zinni went on to say, ''And to think that we are going to 'stay the course'—the course is headed over Niagra Falls.''

Other generals with vast experience voiced serious doubt to the White House about Iraq, including Norman Schwarzkopf, Wesley Clark, Brent Scowcroft and Eric Shinseki.

But the people who wear a suit—not a uniform—in the administration didn't listen.

I served in the Army. I have met thousands of soldiers. I know that it takes about 3 months to turn a young American into a trained and dedicated soldier. So why has it taken almost 3 years to train a handful of Iraqis to be able to fight for their country?

President Bush also said this war has made us safer. But Iraq is not safe for our troops or the Iraqi people. We had 85 soldiers killed last month—one of the deadliest months since the war began.

There have been over 70 suicide bombings in the last 2 months, an average of more than one a day and more than 3,000 concealed bombs either exploded or discovered.

President Bush points to last Thursday's parliamentary elections in Iraq as a sign that there is light at the end of the tunnel. Let's hope this is true.

But we have heard rosy predictions from this President before, yet the insurgency seemed to only grow each time.

Remember: We also heard rosy predictions when the President said ''mission accomplished.'' We heard it when Saddam Hussein was captured. We heard it a year ago after the first election in Iraq.

Meanwhile, 2,158 of our best young Americans have been killed. And nearly 16,000 have been wounded—many with injuries that will forever change their lives. No wonder a significant majority of the American people do not believe that President Bush has a plan to end this war.

That is why it is time for the President to give the American people a realistic plan for bringing our troops home.

What needs to happen? How many Iraqi troops need to be trained?

Let us set reliable goals for our mission, with an understanding of what it will take to get the job done and brinq our troops back home to their families.

Mr. President, we don't want our leader to deny us the hard facts of war. And we don't want the price of this conflict hidden by prohibiting photographs of the flag-draped coffins that carry heroes back to our shores.

We need a leader who recognizes what a majority of the American people see taking place in front of their eyes on television, in our newspapers, in our homes, and in our hearts.

President Bush, I ask you to be frank with us about what we are facing in the future in Iraq. Show us how you will work to avoid further loss of life. And while we honor the memories of those who have perished, we must do whatever we can to make life more bearable for their families.

## KOREAN FAIR TRADE COMMISSION DECISION AGAINST MICROSOFT

Mrs. MURRAY. Mr. President, I rise today regarding the December 7 Korean Fair Trade Commission, KFTC, decision against Microsoft. A major employer in Washington, Microsoft is being unfairly penalized by Korea, but this decision goes well beyond Microsoft as the Korean Fair Trade Commission's decision is ultimately a decision against free and fair trade.

When the European Commission issued its competition decision against Microsoft in March 2004, I was one of many Members who expressed serious concerns about the decision and its impact on one of America's most innovative companies and its workers. Like many of my colleagues, however, I was also alarmed at the broader policy implications of the decision—that Europe would adopt a decision whose negative impact on trade was so clear, and which diverged so markedly from the Department of Justice's remedy addressing the same conduct.

I believe that the December 7 decision of the Korean Fair Trade Commission against Microsoft is yet another warning sign that our trading partners are limiting competition in order to benefit their domestic interests. In this case, the Korean Fair Trade Commission not only followed the EU's market-distorting, anticonsumer approach, but appears to have gone substantially further than the EU remedies in several respects. The KFTC's decision makes me wonder whether the Microsoft case is not a unique case but instead indicates the beginning of a trend among some of our key trading partners to use competition law as a means to pursue protectionist agendas or advance domestic industrial policy goals. If so, this should be of tremendous concern to every member of this body.

Last week I wrote to U.S. Trade Representative Portman about this issue, and I would like to ask unanimous consent to place that letter into the record.

The letter urges Ambassador Portman to work with others in the administration—including at the White House and the Departments of Justice, State, and Commerce—to develop and implement mechanisms for addressing these issues in a more coherent and effective fashion. At the same time, I urged Ambassador Portman to work with others in the administration to take whatever steps are still available to advance the U.S. perspective in the Microsoft case, so that the

anticonsumer, anti-innovation decisions do not establish a precedent that harms U.S. competitiveness for years to come.

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

U.S. SENATE,
*Washington, DC, December 12, 2005.*

Hon. ROB PORTMAN,
*U.S. Trade Representative,*
*Washington, DC.*

DEAR AMBASSADOR PORTMAN: When the European Commission issued its competition decision against Microsoft in March 2004, I was one of many Members who expressed serious concerns about the decision and its impact on one of America's most innovative companies and its workers. Like many of my colleagues, however, I was also alarmed at the broader policy implications of the decision—that Europe would adopt a decision whose negative impact on trade was so clear, and which diverged so markedly from the Department of Justice's remedy addressing the same conduct. At the time, my hope was that the Commission's decision was the counter-example that proved the rule—namely, that comity was alive and well among the U.S. and its trading partners, and that the international community was increasingly moving towards adopting U.S.-style antitrust principles and rules.

Recent developments, however, suggest otherwise. Specifically, the December 7 decision of the Korean Fair Trade Commission (KFTC) against Microsoft—in which the KFTC not only followed the EU's market-distorting, anti-consumer approach, but appears to have gone substantially further than the EU remedies in several respects—makes me wonder whether the Microsoft case is not a unique case, but instead indicates the beginning of a trend among some of our key trading partners to use competition law as a means to pursue protectionist agendas or advance domestic industrial policy goals. If so, this should be of tremendous concern to the United States and your office.

I understand that your Office, and you personally, have been following this issue closely, and that you and other USTR representatives have expressed the Administration's strong concerns on these issues with your Korean counterparts on more than one occasion. As a Member who represents a State with dozens of leading innovative companies employing several hundreds of thousands of workers, please know that these efforts are greatly appreciated. Clearly, however, the results to date are not what we would have hoped.

I am deeply concerned that, without a strategy for addressing these issues more effectively—not only in the EU and Korea, but also more broadly—leading U.S. firms will increasingly face competition rulings in foreign nations that have little or no economic justification, but that make it much more difficult for U.S. industry to compete in global markets. With all of the other challenges facing the global trading regime at the moment, the United States can ill afford yet another barrier denying U.S. industry and workers the benefits of international trade.

I would therefore urge you to work with others in the Administration—including at the White House and the Departments of Justice, State, and Commerce—to develop and implement mechanisms for addressing these issues in a more coherent and effective fashion. At the same time, I would urge you and others in the Administration to take whatever steps are still available to you to advance the U.S. perspective in the Microsoft case, so that the anti-consumer, anti-innovation decisions do not establish a precedent that harms U.S. competitiveness for years to come.

I would appreciate your response to this letter and look forward to continuing our dialogue on these issues in the months ahead.

Sincerely,

PATTY MURRAY,
*U.S. Senator.*

## FOURTH TERM FOR MAYOR TOM MENINO OF BOSTON

Mr. KENNEDY. Mr. President, I welcome this opportunity to congratulate our outstanding mayor in Boston, Tom Menino, on his reelection last month. The people of Boston love Tom, and for good reason.

Running for his fourth full term as mayor, Tom received an incredible 68 percent of the vote on election day, an extraordinary new mandate to continue his leadership that has meant so much to our city.

Tom is Boston's modern FDR, and at the end of this term he will become the longest serving mayor in Boston's 375-year history.

It is a distinction Tom Menino has earned through his unwavering dedication and commitment to the people of Boston.

For 12 years, Mayor Menino has worked day in and day out to unite our diverse city, make its neighborhoods and communities stronger, create fertile opportunities for businesses, and improve the quality of life for all the people of Boston.

He has fought to protect and expand housing for low-income families in the midst of the Nation's tightest housing market. He has never stopped working to meet the needs and protect the basic rights of every resident of our city—regardless of their race or background.

He has been a pioneer in education, creating Read Boston to help every child read at grade level by third grade and the Afterschool for All partnership so that learning doesn't end once school lets out for the day. He has fought to close the achievement gap for all of Boston's children and made Boston the first urban school district to have every school wired to the Internet.

Tom Menino has proven that America's great urban areas can succeed and thrive in this new economy, at a time when more and more of our Nation seems headed for the suburbs. Tom modestly describes himself as an urban mechanic, but it is far more accurate to say that he is an urban genius. Each day, he adds new proof that there are second and third acts for America's cities in our modern Nation.

Above all, Mayor Tom Menino has always worked tirelessly to ensure that Boston's brightest days lie ahead and that our city will continue to build on its incomparable history.

Tom has worked especially closely with our local colleges and universities to make certain that Boston remains the most prestigious destination in America for young men and women seeking excellence in higher education.

He has welcomed our burgeoning biotech and medical research sectors in order to guarantee that Boston stays at the cutting edge of these highly promising industries of the future. This new century may well be the century of the life sciences, and Tom Menino is making sure that Boston helps write that history.

Next year marks the 100th anniversary of the inauguration of another visionary Mayor of Boston, my grandfather, John F. Fitzgerald, whose love of our city was legendary and whose commitment to progress was unchallenged.

Grampa Fitzgerald might not immediately recognize modern Boston as his beloved hometown, but he would be thoroughly at home with its vitality and its spirit of innovation, progress, and opportunity. Those qualities he fought so hard for a century ago are alive and well today, an he would be grateful that the city he loved so dearly is now in the capable hands of Mayor Tom Menino.

In the years ahead, I look forward to continuing to work with Mayor Menino to find solutions to the real and often daunting challenges facing Boston and all of urban America. No one is more committed to solving the big issues than Tom Menino.

He and his extraordinary wife Angela have made a remarkable team for Boston, and all of us in the city look forward very much to more of the unique brand of Menino leadership in the years ahead.

## TRIBUTE TO JULIA SERNA

Mr. DOMENICI. Mr. President, I would like to honor and praise a longtime member of my staff, Julia Serna, who has served the people of New Mexico admirably. Julia works in my Las Cruces office and has been a member of my staff since April 1993. Julia will retire at the end of 2005.

Julia's positive outlook is remarkable, and her smile and zest for life is contagious. And her jovial attitude and eagerness to deal with challenges is commendable. So many of those from my home State have come to know and love Julia over the years. Julia has always been known as someone always willing to listen to my constituents and lend a helping hand.

During her work on immigration and veterans issues, she has gone to great lengths to help a great many people in my home State. Julia is loyal and is one on whom I have come to rely and depend. In that time, we have accomplished much, and I am extremely proud of those accomplishments. She will be greatly missed by me and my staff and by the people of southwestern New Mexico for whom she has worked for so many years.

Most importantly, Julia is my good friend. But the time has come. After over 12 years of service on my staff, I

know Julia's children Susie, Gabriel, Adolfo, and her grandchildren and great grandchild will be glad to be able to spend more time with her. As she begins her well-deserved retirement, I extend my best wishes to Julia and her family. Julia, for all you have done for me, and for all you have done for the people of New Mexico, you have my utmost respect and deepest gratitude. Thank you, for a job well done. We will miss those tamales at the office.

## JUDICIAL PHILOSOPHY

Mr. HATCH. Mr. President I rise to make a few remarks about a matter relating to judicial philosophy that has been discussed by some during the course of this year in connection with the public debate over Supreme Court vacancies that have occurred this year.

Some have attempted to create a false conclusion by criticizing a school of judicial philosophy sometimes referred to as the ''constitution in exile''.

For example, earlier this year, my esteemed colleague from Delaware, Senator BIDEN, who, I understand, teaches constitutional law at the University of Delaware, entered into this debate. My friend from Delaware specifically asked us to reflect upon the judicial philosophy of one of our Nation's most respected Federal appellate judges, Chief Judge Douglas Ginsburg of the U.S. Court of Appeals for the District of Columbia Circuit.

I was recently in attendance at the DC Circuit for the formal swearing in of Judge Thomas Griffith and was once again impressed with the quality of jurists of this extremely important and influential court.

I commend Senator BIDEN for his support for the nomination of Judge Griffith.

As I will explain, I do take exception to some of the characterizations that the former chairman of the Judiciary Committee made about the views of Chief Judge Ginsburg.

The senior Senator from Delaware invited us to ''read Judge Ginsburg's ideas about the 'Constitution in Exile'. . . [and to] read what Judge Ginsburg has written'' about the ''fifth amendment's taking clause, the non-delegation doctrine, the 11th amendment, and the 10th Amendment.'' Since the Chief Judge of the DC Circuit is one of our Nation's finest jurists, I welcomed this opportunity to reacquaint myself with his opinions and writings. I was surprised and somewhat dismayed, then, to discover that this was such a short assignment.

Considering the sharp criticism by my Judiciary Committee colleague, Senator BIDEN, of Chief Judge Ginsburg's views as ''radical,'' I was taken aback to discover how little he had actually written on the specified subjects.

It is no exaggeration to say that on most of these issues, Judge Ginsburg had written nothing of substance.

That being said, having considered what little he did write on these topics, the characterization of his views as ''radical'' is, at best, a stretch.

If the research that I have seen is correct, Chief Judge Ginsburg has authored only two opinions that even refer to the takings clause of the Constitution. In neither did he decide the takings claim being presented.

In *Corporation of Presiding Bishop of the Church of Jesus Christ of the Latter-Day Saints* v. *Hodel*, 830 F.2d 374, 381, DC Cir. 1987, Chief Judge Ginsburg, writing for the court, noted that ''[t]he question of whether courts, as opposed to legislative bodies, can ever 'take' property in violation of the Fifth Amendment is an interesting and by no means a settled issue of law.'' He determined, however, that the court did not need to decide this issue. Similarly, in *City of Los Angeles* v. *United States Dept. of Transp.*, 90 F.3d 591, D.C. Cir. 1996, unpublished, Chief Judge Ginsburg, writing for the court, determined that the takings claims were not ripe for resolution.

Many of my colleagues have denounced ideological decision-making by judges who are eager to promote their own speculative constitutional understanding at the expense of the American people's traditional views. I actually think that is a fair description of judicial activism, and it is clear that Chief Judge Ginsburg has not engaged in it. Quite the contrary, in these cases where he declined the opportunity to reach for and resolve constitutional questions prematurely, he exhibited the moderation and prudence we should expect of our judges.

Similarly, Chief Judge Ginsburg does not appear to have written anything of significance on the tenth or eleventh amendments. In the one and only case in which he even mentions the tenth amendment, *Chenoweth v. Clinton*, 181 F.3d 112, D.C. Cir. 1999, Chief Judge Ginsburg, writing for the court, did not address the merits of the claim because the court had determined that the party lacked standing. As for the eleventh amendment, Chief Judge Ginsburg's ''radical'' contribution was to note, in *Brown* v. *Secretary of Army*, 78 F.3d 645, 653, D.C. Cir. 1996, that a case referred to by the appellant citing the eleventh amendment was inapposite to the case before the court. This is hardly the controversial statement in support of State sovereign immunity one would expect given my colleague's remarks.

So, as far as I am aware, Chief Judge Ginsburg has not written substantively on the tenth amendment, the eleventh amendment, or the takings clause. How then can anyone fairly conclude that Chief Judge Ginsburg has such radical views about the constitutionally limited powers of the national government? Perhaps some are reading between the lines and seeing emanations and penumbras that others do not discern.

The only topic singled out for criticism by my friend from Delaware that I could find was, in fact, substantively addressed by Chief Judge Ginsburg is the non-delegation doctrine. In a 1995 book review of David Schoenbrod's ''Power Without Responsibility'', Chief Judge Ginsburg employed the term ''Constitution-in-exile.''

Apparently some liberal critics of the President's judicial nominees have seized on this expression, perhaps in the hope that it will scare the American people into fearing some super-secret rightwing led by wayward judges.

Of course, this is nonsense.

But it is worth noting that the many of the critics who talk today about the Constitution-in-exile have completely unmoored that term from Chief Justice Ginsburg's original formulation.

In an article in the journal Regulation, Chief Judge Ginsburg wrote the following:

> [F]or 60 years the non-delegation doctrine has existed only as part of the Constitution-in-exile, along with the doctrines of enumerated powers, unconstitutional conditions, and substantive due process, and their textual cousins, the Necessary and Proper, Contracts, Takings, and Commerce Clauses. David Schoenbrod, ''Power Without Responsibility: How Congress Abuses the People Through Delegation,'' Regulation Magazine (1995 No. 1) (Book Review), at 84.

He went on to explain that, ''The memory of these ancient exiles, banished for standing in opposition to unlimited government, is kept alive by a few scholars who labor on in the hopes of a restoration, a second coming of the Constitution of liberty—even if perhaps not in their own lifetimes.'' Id.

So two sentences equal a judicial scheme to advance substantive economic liberty and restrain Federal authority? For a careful reader, it is clear that Chief Judge Ginsburg promotes no such agenda. First, he was referring only to the non-delegation doctrine, the supposedly radical proposition that Congress, not unelected bureaucrats, should be responsible for making our laws. And second, Chief Judge Ginsburg was writing a book review, and his reference to those ''few scholars'' was obviously not a reference to himself because he had not written on this subject.

His point was that the author of the book he was reviewing was misguided in thinking that the Supreme Court was likely to put teeth back into the non-delegation doctrine. Far from arguing that courts should strip Congress of their authority to delegate its lawmaking authority, he suggested that it would be more productive to ask Congress to change the way it delegates lawmaking authority to administrative agencies. Chief Judge Ginsburg was Administrator of Information and Regulatory Affairs of the Office of Management and Budget during the Reagan administration. This is the office within the Executive Office of the President charged with reviewing all Federal regulations. So Chief Judge Ginsburg has considerable experience and expertise in these matters.

In the referenced book review, Chief Judge Ginsburg endorses then-Judge

Breyer's suggestion that ''[p]roposed regulations, or at least those that would impose a burden in excess of a specified amount, say $100 million, would not take effect unless affirmatively approved by both houses of Congress.'' In this regard, I would note that Justice Breyer was one of the seminal thinkers in the field of regulatory reform and I would recommend that everyone read his 1982 book, ''Regulation and Its Reform'' in which he lays out a comprehensive analysis of, and suggestions for, regulatory reform.

In Chief Judge Ginsburg's speech, On Constitutionalism, published in the Cato Supreme Court Review in 2003, he articulates much the same position, stating that the separation of powers doctrine clearly indicates that ''there must be a limit upon the ability of Congress to delegate lawmaking functions to the executive branch.'' Id. at 16. That is, the Constitution does seem to prohibit legislators from simply delegating their constitutional authority to legislate to an executive branch agency and then go home. Yet he also notes the Supreme Court's failure since the mid 1930's to find any act of Congress a violation of the non-delegation doctrine, demonstrating the High Court's reluctance to give meaning to the doctrine. So this is the view some have characterized as radical, the Constitution assigns the legislative power to Congress, and it violates the principle of separation of powers to have unlimited delegation of that law-making authority to executive branch agencies. Yet because the courts have been reluctant to adjudicate these arrangements, any remedy must come through political persuasion.

Chief Judge Ginsburg did join an opinion, the relevant part of which was written by another judge, in which the court held that the Environmental Protection Agency had interpreted sections of the Clean Air Act authorizing the national ambient air quality standards, NAAQS, for ozone and particulate matter so loosely as to render them unconstitutional delegations of legislative power. See *American Trucking Ass'n.* v. *EPA*, 175 F.3d 1027, 1034–40, D.C. Cir. 1999. More specifically, the court determined that it was unclear what in EPA's view was the ''intelligible principle'' the Congress had directed the agency to follow and no such principle was apparent to the court on the face of the act.

The court therefore remanded the cases to the EPA so that it could detail the principle limiting the agency's discretion. The full DC Circuit then denied the EPA's petition for rehearing en banc. *See* 195 F.3d 4, DC Cir. 1999. It is true, however, the Supreme Court granted the EPA's petition for certiorari and held that the act's delegation of authority to the EPA to set the NAAQS at the level ''requisite to protect the public health'', although broad, provided an ''intelligible principle'' for setting air quality standards and was therefore constitutional without further delineation by the agency. *Whitman* v. *American Trucking Ass'n*, 531 U.S. 457, 473, 2001. But this is hardly the first time the Supreme Court overruled an appellate court and, in any case, is a pretty thin reed on which to reach a conclusion that the lower court decision represented a radical break with constitutional jurisprudence.

I encourage everyone to examine Chief Judge Ginsburg's writings pertaining to the takings clause, the non-delegation doctrine, and the tenth and eleventh amendments. A fair reading warrants a conclusion that there is nothing radical about his reasoning or conclusions. Chief Judge Ginsburg's writings on these matters are neither extensive nor extreme. Characterizing them as a ''stark departure from current constitutional law'' is not justified.

I also might add that the issue of non-delegation is not as black or white as many have come to believe in recent times. Some appear—including many advocates of the liberal welfare state administered by so many Federal agencies—to argue, contrary to the Constitution's clear commitment to limited government, that there should be little, if any, judicial oversight over congressional actions and claim that even modest judicial requirements that Congress act within its constitutional authority are radical changes to our law. It seems counterintuitive then that these same people argue for an unlimited congressional authority to delegate their lawmaking power to another branch of Government. On the one hand, Congress is all powerful. On the other hand, they can give that power away.

The record reflects that Chief Judge Ginsburg is a mainstream conservative judge, who applies the Constitution faithfully. He is no judicial radical. He is one of the most respected judges in the Federal judiciary. Suggestions to the contrary are not supported by the facts.

## NOTICE OF CHANGE IN INTERNET SERVICES USAGE RULES AND REGULATIONS

Mr. LOTT. Mr. President, I am taking this opportunity to announce that in accordance with Title V of the Rules of Procedure of the Committee on Rules and Administration, the committee intends to update the ''U.S. Senate Internet Services Usage Rules and Regulations.''

Based on the committee's review of the 1996 regulations and the October 8, 2003 amendments to the regulations, the following changes to these policies have been adopted effective today, December 21, 2005. The changes primarily affect the activities of a Senator who is running for election, section C.

Set forth below are the updated Internet Usage Rules and Regulations:

A. SCOPE AND RESPONSIBILITY

1. Senate Internet Services (''World Wide Web and Electronic mail, BLOGs, Podcasting, streaming media, etc.'') may only be used for official purposes. The use of Senate Internet Services for personal, promotional, commercial, or partisan political/campaign purposes is prohibited.

2. Members of the Senate, as well as Committee Chairmen and Officers of the Senate may post to the Internet Servers information files which contain matter relating to their official business, activities, and duties. All other offices must request approval from the Committee on Rules and Administration before posting material on the Internet Information Servers.

3. Websites covered by this policy must be located in the SENATE.GOV host-domain.

4. It is the responsibility of each Senator, Committee Chairman (on behalf of the committee), Officer of the Senate, or office head to oversee the use of the Internet Services by his or her office and to ensure that the use of the services is consistent with the requirements established by this policy and applicable laws and regulations.

5. Official records may not be placed on the Internet Servers unless otherwise approved by the Secretary of the Senate and prepared in accordance with Section 501 of Title 44 of the United States Code. Such records include, but are not limited to: bills, public laws, committee reports, and other legislative materials.

B. POSTING OR LINKING TO THE FOLLOWING MATTER IS PROHIBITED

1. Political Matter

a. Matter which specifically solicits political support for the sender or any other person or political party, or a vote or financial assistance for any candidate for any political office is prohibited.

b. Matter which mentions a Senator or an employee of a Senator as a candidate for political office, or which constitutes electioneering, or which advocates the election or defeat of any individuals, or a political party is prohibited.

2. Personal Matter

a. Matter which by its nature is purely personal and is unrelated to the official business activities and duties of the sender is prohibited.

b. Matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Senator on a purely personal or political basis rather than on the basis of performance of official duties as a Senator is prohibited.

c. Reports of how or when a Senator, the Senator's spouse, or any other member of the Senator's family spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Senator is prohibited.

d. Any transmission expressing holiday greetings from a Senator is prohibited. This prohibition does not preclude an expression of holiday greetings at the commencement or conclusion of an otherwise proper transmission.

3. Promotional Matter

a. The solicitation of funds for any purpose is prohibited.

b. The placement of logos or links used for personal, promotional, commercial, or partisan political/campaign purposes is prohibited.

C. RESTRICTIONS ON THE USE OF INTERNET SERVICES

1. During the 60 day period immediately preceding the date of any primary or general election (whether regular, special, or runoff) for any national, state, or local office in which the Senator is a candidate, no Member may solicit constituent input or inquiries (such as online petitions or opinion polls or issue alerts) using a Senate Internet Server (''World Wide Web and Electronic mail,

BLOGs, Podcasting, streaming media, etc.''), unless the candidacy of the Senator in such election is uncontested.

2. Electronic mail may not be transmitted by a Member during the 60 day period before the date of the Member's primary or general election unless it is in response to a ''direct inquiry''. Exceptions to this moratorium include the following: press release distribution to press organizations and email to perform administrative communication. ''Direct inquiries'' do not include a request to be added to a mailing list, subscription list, or other request to receive future mailings. During the 60 day period, electronic news letters may not be sent out.

3. During the 60 day period immediately before the date of a biennial general Federal election, no Member may solicit constituent input or inquiries (such as online petitions or opinion polls, issue alerts or request to be added to newsletter mailing lists—electronic or otherwise, on behalf of another Senator who is a candidate for election, unless the candidacy of the Senator in such election is uncontested.''

4. An uncontested candidacy is established when the Rules Committee receives written certification from the appropriate state official that the Senator's candidacy may not be contested under state law. Since the candidacy of a Senator who is running for reelection from a state which permits write-in votes on elections day without prior registration or other advance qualification by the candidate may be contested, such a Member is subject to the above restrictions.

5. If a Member is under the restrictions as defined in subtitle C, paragraph (1), above, the following statement must appear on the homepage: (''Pursuant to Senate policy, newsletters, petitions, opinion polls and issue alerts and other electronic communications cannot be initiated by this office for the 60 day period immediately before the date of a primary or general election.''). The words ''Senate Policy'' must be hypertext linked to the Internet services policy on the Senate Home Page.

6. A Senator's homepage may not refer or be hypertext linked to another Member's site or electronic mail address without authorization from that Member.

7. Any Links to Information not located on a Senate Internet Server must be identified as a link to a non-Senate entity.

D. MISCELLANEOUS

Domains and Names (URL)—Senate entities must reside exclusively on SENATE.GOV domains. The URL name for an official Senate Web site located in the SENATE.GOV domain must:

1. Member's sites—contain the Senator's last name.

2. Committee sites—contain the name of the committee.

3. Officer sites—contain the name of the office.

## NEPAL'S DOWNWARD SPIRAL

Mr. LEAHY. Mr. President, this is the third time in the past 6 months that I have spoken in this chamber about Nepal. I do so because this land of mostly impoverished tea and rice farmers who toil between India and China on precipitous hillsides in the shadows of the Himalayas, is experiencing a political crisis that may plunge the country into chaos.

As many predicted, King Gyanendra's seizure of absolute power on February 1 and suppression of civil liberties has damaged Nepal's foreign relations, triggered clashes between prodemocracy demonstrators and the police, and strengthened the Maoist insurgency.

The Maoists, whose use of extortion and brutality against poor villagers has spread throughout the country, announced a unilateral ceasefire on September 3 which they recently extended for an additional month. Although flawed, the ceasefire was the impetus for a loose alliance with Nepal's weak political parties after the King refused to negotiate with them and sought instead to consolidate his own grip on power.

Last month, the Maoists and the parties endorsed a vaguely worded but important 12 point understanding that could be the basis for a national dialogue to restore democracy and end the conflict. That, however, would require some reciprocal confidence building measures by the army, which has so far rejected the Maoist ceasefire as a ploy and continues to see itself as the defender of an anachronistic, corrupt and autocratic monarchy.

Although the army has won praise for its role in international peacekeeping missions, its reputation has been badly tarnished because of its abusive and ineffective campaign against the Maoists. It has engaged in arbitrary arrests, torture and extrajudicial killings of ordinary citizens, which has alienated many of the same people who have been victims of the Maoists.

On December 10, when hundreds of Nepali citizens took to the streets to protest the King's repressive actions, the police used force to break up the rally and arrested several dozen people. The press reported another 120 arrests and dozens injured in demonstrations on December 17. More protests are likely, and it may be only a matter of time before Katmandu is in the full throes of a pitched battle between prodemocracy demonstrators and the King's security forces.

This is the disheartening situation in which Nepal finds itself today. The immediate challenge for the United States is how to help promote a political dialogue which includes the broadest possible participation from Nepali society to restore and strengthen democracy and end the conflict.

The Maoist cease-fire, while welcome, was a tactical move to lure the political parties into an alliance and further isolate the palace. There is no way to predict with confidence if the Maoists would participate in a political process in good faith, or simply use it as a ruse to gain new recruits and weapons. A resumption of attacks against civilians would be condemned and resisted by the international community. The Maoists should know that they cannot defeat the government by force, and as long as they extort money and property and abduct children they will be seen as enemies of the Nepali people.

Similarly, military experts have concluded that Nepal's undisciplined army cannot defeat a determined insurgency that attacks civilians and army posts and then disappears into the mountains.

There are also concerns about Nepal's political parties, who do not have a record of putting the interests of the nation above their own self interest. But the political parties, for all their flaws, are the real representatives of the Nepali people. They urgently need to reform, but there is no substitute for them.

Despite these difficulties and uncertainties, it is clear that the King has failed to provide the leadership to build bridges with the country's democratic forces and develop a workable plan. It is also clear that efforts by the international community, including the United States, to appeal to the King to start such a process, have failed. The Bush administration should apply whatever pressure it can, including denying U.S. visas to Nepali officials and their families.

With few options and no guarantees, Nepal's hour of reckoning is approaching. There is a growing possibility that the King's obstinacy and unpopularity will trigger massive civil unrest, shootings and arrests of many more civilians by soldiers and police, Nepal's further isolation, and perhaps the end of the monarchy itself.

Only the army has the ability to convince the King to abandon his imperial ambitions, but time is running out. The army's chief of staff, General Pyar Jung Thapa, was privileged to receive training at the Army War College and he has participated in other U.S. military training programs. He has led Nepali troops in UN peacekeeping missions. He knows, or he should have learned, that the function of a modern, professional military is to protect the rights and security of the people, not the privileges of a dictator who has squandered the moral authority of his office. It is not only in the interests of Nepal, but in the army's long-term self-interest, to show real leadership at this critical time.

The United States should do everything possible to encourage the army to announce its own cease-fire, to accept international observers as the Maoists have said they would do, and to support a broadly inclusive political dialogue with or without the participation of the palace.

Such a process, to be meaningful, must lead to free and fair elections. The municipal elections announced by King Gyanendra for early next year, without any consultation with the political parties, are no solution. An attempt to apply a veneer of legitimacy to an otherwise undemocratic process will only prolong and exacerbate this crisis.

Many of the Maoist's grievances mirror those of the majority of Nepal's people who for centuries have suffered from discrimination, poverty, and abuse by one corrupt government after another. But Nepal's problems, which

are at the root of the conflict, can only be solved through a transparent, democratic process. The Maoists have opened the door a crack for that to begin. The army should reciprocate. The international community should lend its support.

## RECOGNIZING SENATOR CORZINE

Mr. DOMENICI. Mr. President, I rise to wish Senator JON CORZINE the very best as he leaves his service in the Senate to become the next Governor of the State of New Jersey. Although we didn't always agree on all the issues, it has been an honor to work with him. He has always been courteous and professional and I have enjoyed the opportunity to know him.

Senator CORZINE's career has taken him to the uppermost levels in the business world. He was a partner at Goldman Sachs at the age of 33 and he became CEO of that prestigious firm at the age of 50. As someone who has been extraordinarily successful in the private sector, I am sure Senator CORZINE has had many life opportunities offered to him. The fact that he has chosen a career in public service speaks a great deal to the type of person that he is.

Senator CORZINE's economic expertise helped him become a leader on budget and fiscal issues in the Senate. I had the privilege of serving with Senator CORZINE as members on the Budget Committee. His knowledge and understanding of financial markets and economic issues will be missed.

JON CORZINE has been a good Senator, and I wish him success as he leaves here to become Governor of the State of New Jersey.

## LCDR ANDREW J. SCHULMAN, USN

Mr. DOMENICI. Mr. President, I rise to recognize LCDR Andrew Schulman, U.S. Navy for the outstanding contributions he rendered this past year while serving as a legislative fellow on my staff. Andrew is completing his Capitol Hill fellowship this month, and it is my hope that he has benefited as much from this experience as have I from having him on my staff.

Lieutenant Commander Schulman is a member of the U.S. Navy Civil Engineer Corps and is a Seabee Combat Warfare qualified officer. To my great benefit, Andrew joined my office in a year when the Department of Defense, made public its Base Closure and Realignment list. When an Air Force base in my home State of New Mexico was designated for closure, Andrew's expertise in facilities planning and assessment proved critical in our successful effort to convince the BRAC Commission that the DOD's decision on Cannon Air Force Base was premature and deserved a second look. I have no doubt that Andrew's tireless work and dedication was key to the Commission's ultimate finding that DOD ''substantially deviated'' on several BRAC selection criteria and that the Department ''shall seek'' a new mission for Cannon.

Andrew's experience as the officer in charge of designing and constructing detention cells for enemy combatants at Guantanamo Bay also provided me a firsthand insight on the issue of enemy prisoner detainment. It is an issue that has been carefully scrutinized by Congress this year, and Andrew provided sharp memoranda and oral briefings on both legal and policy aspects that greatly informed my own understanding of both interrogation and detainee policies of the Department of Defense.

I must also thank Andrew's family for enduring his many late nights at work. So to Mary Rose, Andrew's wife, and the Schulman children, Adam and Emma, I say thank you. And without question, you can be extremely proud of Andrew's dedication to our country.

Finally, I want to give my heartfelt thank you to Andrew for his service. His ''can-do'' attitude and tireless work ethic were infectious. His willingness to tackle issues which were new to him and to embrace the goals I have set for my staff on behalf of both the men and women of the armed forces and the citizens of New Mexico were truly commendable. I have no doubt that as Andrew continues his military career, he will achieve great things for both the U.S. Navy and his country, and I wish him the very best of luck in all his future endeavors.

## TRIBUTE TO SENATOR WILLIAM PROXMIRE

Mr. DODD. Mr. President, I rise today to honor a long-time friend and an esteemed colleague William Proxmire, who passed away last week at the age of 90. I had the privilege of serving with him in this body for 8 years.

Senator Proxmire retired from this Chamber 16 years ago, but he is still remembered for his staunch work ethic and his unique dedication to a set of closely held principles. His standards of conduct as a U.S. Senator are legendary. In 22 years of service, he attended more than 10,000 rollcall votes—still a record in the Senate. In his last two campaigns for office, he declined all campaign donations—from anyone. During each race, he spent less than $200, all out of his own pocket, mostly to pay for postage and envelopes to return donations offered to him by his supporters. In both instances, he won by a landslide, a testament to the overwhelming support of his constituency in Wisconsin.

I have always felt a special affinity for Senator Proxmire and the issues that he championed. He was one of the few Senators who served with both my father and me. And he dedicated a great deal of time and effort to an issue that both my father and I considered paramount to our Nation's future. Over 19 years, he made over 3,000 statements on the Floor in support of ratification of an international treaty outlawing genocide. My father, as Senator Proxmire put it, ''contributed a special zeal to this effort,'' fighting for this issue even before he entered the Senate. In 1950, as a member of a special committee of the American Bar Association, my father was one of the first witnesses to appear before the Foreign Relations Committee in favor of a treaty condemning genocide. Senator Proxmire's efforts over the years to champion this issue meant a great deal to me. And I am particularly honored to have brokered a deal with Senator Jesse Helms in 1988 to finally commit the United States as a signatory to this treaty.

I also had the privilege of serving with Senator Proxmire on the Banking Committee when he was the chairman of that body, and I can tell you, that he performed his duties with a unique commitment both to competition and the rights of the consumer. Early in his career, he passed the Truth-in-Lending Act, ensuring consumer access to information and forcing banks to compete openly and on equal terms. He also helped pass a bill deregulating the banking industry, which helped financial institutions offer better services at lower costs to consumers.

Senator Proxmire is perhaps best remembered for his fervent devotion to slowing Government spending. He returned over $1 million of his staff budget to the Treasury. He refused to travel abroad at the expense of the taxpayers. And he developed the ''Golden Fleece'' award to expose government programs that he considered wasteful. He gave statements on the floor exposing studies that explored the effects of alcohol on fish, documented the body measurements of airline flight attendants, and examined why people fall in love. Each ''Golden Fleece'' not only illuminated Government programs that might be considered profligate, but reminded us of the humor and personality of this noble public servant.

My wife Jackie and I offer our deepest condolences to his wife Helen, to his family, and to the people of Wisconsin and the citizens of our Nation, for the loss of such a dedicated public servant and an exceptional man.

## BROADCASTING BALANCE

Mr. BROWNBACK. Mr. President, I rise today to reaffirm the Corporation for Public Broadcasting's requirement to ensure ''strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.'' CPB receives roughly $400 million from Congress as part of the Labor, Health and Human Services, Education Appropriations bill.

CPB's requirement to see that recipients like the Public Broadcasting Service and National Public Radio uphold the objectivity and balance standard does not stem from congressional micro-management or partisan interference. Rather, it is a matter of complying with the law under which CPB dispenses taxpayers' money.

That law mandates CPB to see to both ''maximum freedom of the public telecommunications entities'' and their ''strict adherence to objectivity

and balance.'' These mandates are not in conflict. Instead, they complement each other, and to maintain Americans' confidence in public broadcasting the Corporation for Public Broadcasting must see that both mandates are fulfilled. Congress and the taxpayers expect nothing less.

## GUANTANAMO PRISONERS

Mr. BINGAMAN. Mr. President, I rise today to express my strong disagreement with the language in the Defense appropriations and Defense authorization conference reports concerning the treatment of prisoners being held in Guantanamo Bay, Cuba.

Under the McCain amendment, U.S. personnel are prohibited from engaging in torture or cruel, inhuman, or degrading treatment. I strongly support this. This ban applies to all military and intelligence personnel regardless of where they are located throughout the world. This is a clear statement that the United States will abide by its obligation to follow the law, and it is a step forward in reinstating our Nation's moral authority.

However, the Graham amendment would undercut much of what we are accomplishing with the McCain amendment in two respects. First, it would undercut our commitment to prohibiting the use of torture by allowing evidence produced as a result of torture to be used in military legal proceedings. Second, it would undercut any enforcement of this prohibition by barring individuals from seeking judicial review of the legality of their detention or bringing a suit to stop unlawful treatment.

When the Graham-Levin compromise passed the Senate, it had some good language in it, and it had some very troubling language.

On the good side, the amendment provided that the Combatant Status Review Tribunals at Guantanamo, which are charged with determining whether individuals should be classified as so called enemy combatants, are not allowed to use evidence that is derived through ''undue coercion,'' such as torture. This was an important step forward. We should not be relying on information that is inherently unreliable in deciding whether to indefinitely detain a person. Unfortunately, this provision is now gone.

In the conference report the outright prohibition on using evidence derived through torture was replaced with a mere assessment of whether the evidence has been derived through coercive means, such as torture, and whether the evidence has any probative value. I would hope that a military tribunal assessing such evidence would realize that evidence derived through torture is not reliable. However, as drafted, this bill would allow a Combatant Status Review Tribunal to use evidence derived through torture if the tribunal finds that the evidence is helpful.

To the best of my knowledge this would be the first time in U.S. history that the United States would be on record as allowing this type of evidence in any type of legal proceeding. This is wrong and a huge step backwards.

Furthermore, from a practical standpoint the assessment with regard to whether the evidence is derived though torture is essentially pointless. The conference report states that this assessment is only applicable prospectively. The problem is that of the over 500 prisoners being held at Guantanamo, every single one has already undergone a status hearing to determine whether or not they are an ''enemy combatant.'' Under the existing procedures, there is no exclusionary rule prohibiting the use of evidence derived through torture. Therefore, the Government may be basing its finding that some of these prisoners are ''enemy combatants'' on faulty evidence that is completely unreliable.

Let me provide an example of why this language is so problematic. Suppose a person is detained by the U.S. Government and handed over to a foreign intelligence service for interrogation. While U.S. personnel are prohibited from using interrogation techniques that amount to torture or cruel, inhuman, or degrading treatment, other countries use interrogation techniques, such as electric shock or pulling off a person's fingernails, which do not comply with this standard. If a person is tortured while in the custody of one of these intelligence services, any statements that the person makes, either incriminating himself or another person, could be admissible in the Combatant Status Tribunal Review, or CSRT, process. Frankly, I, and most people, would confess to nearly anything to avoid the harshest forms of torture. We should not be permitting the use of this type of evidence in any legal proceeding.

It is inconsistent to say that we will prohibit the use of torture by our military and intelligence personnel because it is legally and morally repugnant, but we will allow evidence derived in this manner to be used in our military proceedings. ''We don't do it, but if you do it we will use it,'' is hardly a position of clarity with regard to our commitment to uphold the prohibition on torture, or cruel, inhuman, or degrading treatment.

The conference report also limits the ability of a prisoner at Guantanamo to file a writ of habeas corpus. This fundamental right has its foundation in the Magna Carta and is enshrined in our Constitution. Simply, it is the right to go to court when a person is detained by the Government and ask whether or not one's detention is justified. Contrary to how this right was characterized during debate on this bill, this is not about prisoners suing to get access to DVD movies or because they are unhappy with the type of peanut butter that they are being served—the Great Writ, as habeas is known, is meant to provide a basic check in preventing the Executive Branch from exercising unfettered authority in imprisoning individuals without judicial review.

The fact is that mistakes happen. For example, take the recent case of the innocent German citizen who was picked up by the CIA in Macedonia and flown to a prison in Afghanistan where he was held in a secret facility for over 5 months because he was thought to be involved in terrorism—he wasn't. We made a mistake. Judicial review is important in reducing the likelihood that we are wrongfully imprisoning people, and we should have a viable process for weeding out these mistakes.

According to news reports, commanders in Guantanamo have estimated that 70 percent of the individuals imprisoned there may be no threat at all. Whether this number is correct or not, it is reasonable to require that there be some meaningful judicial review in place to make sure that we are not indefinitely imprisoning people who pose no threat. If you are going to hold someone indefinitely for years on end without affording them a trial, I think it is fair to allow a person to challenge the basic legality of their detention.

The Graham amendment, as it passed the Senate, restricted habeas corpus.

Unfortunately, the conference report goes much further. It also prohibits a prisoner from bringing ''any other action'' against the Government regarding ''any aspect'' of their detention. This is an excessively broad restriction. It seems to eliminate all other causes of action, including the ability of a person to bring a suit to stop ongoing torture. This significantly undermines the McCain amendment. Ultimately, I have confidence that a court will hold that this provision is overly broad and unconstitutional.

In addition, it is also important to note what the conference report does not do. The language contained in the conference report limits access to U.S. courts. But the conference report does not provide an exception for people who have been found not to be a threat and have been determined to be ''non-enemy combatants.''

Recently, the Washington Post has done a series of articles highlighting the plight of the ethnic Uighurs, who are Chinese Muslims opposed to the Communist government in China and who are seeking their own homeland in northwestern China. Mr. President, I ask unanimous consent that these Washington Post articles be inserted into the RECORD at the end of my statement.

The Department of Defense has been holding a group of Uighurs in Guantanamo for the last 4 years. CSRT hearings have been held for these individuals, and the Department of Defense has determined that they are ''non-enemy combatants.'' They are not a threat to our country and are not part of the al Qaida terrorist organization. The problem is that despite the finding

that they are not ''enemy combatants,'' the Defense Department has refused to release them from Guantanamo because it can't find a country to take them—if they are sent to China they will likely be arrested and tortured, and countries such as Saudi Arabia, where many have lived previously, won't take them back. And the United States will not allow them to enter our country because it does not want them to apply for asylum.

In essence, we are taking away the right of a person who is being held without charge, indefinitely, to go to court and ask for their release after the Department of Defense has said that they are essentially innocent. Not only is this repugnant to our Nation's values, it is also blatantly unconstitutional.

Mr. President, over the last several years this administration has diminished our standing in the world by backing away from our longstanding commitment to human rights and the rule of law. I look forward to the day when the United States is once again viewed as a leader in this regard.

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

[From the Washington Post, Dec. 15, 2005]

DETAINEE CLEARED FOR RELEASE IS IN LIMBO AT GUANTANAMO

(By Josh White and Robin Wright)

When U.S. forces freed Saddiq Ahmad Turkistani from a Taliban prison in Kandahar, Afghanistan, in late 2001, the detainee met with reporters at a news conference and told U.S. officials that he had been wrongly imprisoned for allegedly plotting to kill Osama bin Laden.

An ethnic Uighur who was born and raised in Saudi Arabia, Turkistani said he believed in the U.S. campaign against terrorism. He professed hatred for al Qaeda and the Taliban—groups he said tortured him in prison—and offered to help the United States. Intelligence officials and U.N. representatives told Turkistani they would seek to find him refuge, possibly in Pakistan, according to accounts he later gave his lawyers.

Instead, Turkistani was taken to a U.S. military base in Afghanistan, where he was stripped, bound and thrown behind bars. U.S. officials then strapped him into an airplane, fitted him with dark goggles and sent him to the U.S. detention facility at Guantanamo Bay, Cuba, in January 2002, according to U.S. lawyers who represent him.

Nearly four years later, Turkistani remains there, despite being cleared for release early this year after a government review concluded he is ''no longer an enemy combatant.'' It is unclear exactly when that determination was made, but Justice Department lawyers gave notice of it in an Oct. 11 court filing.

Turkistani wrote a letter to his lawyers in recent months, in which he asked about the welfare of his family, whom he has not heard from in eight years: ''Now, I have been under the control of the Americans for the past three years and eight months. Six months ago, I was told by the Americans that I am innocent and I am not an enemy combatant.''

It remains a mystery why Turkistani was sent to Guantanamo Bay at all. Some officials and his lawyers speculate that he has been held by mistake. Or, they say, some officials may have believed he had intelligence value because bin Laden accused him of trying to plot his killing in 1998. U.S. officials have offered no public explanation.

Like a group of five Chinese Uighurs (pronounced wee-gurs), Turkistani remains incarcerated because the United States simply does not know what to do with him. He does not have Saudi citizenship, and U.S. officials are having trouble getting his home country to take him back. U.S. officials do not want to send him to China, where Uighurs are seeking a separate homeland, saying he is likely to be tortured.

But unlike many detainees at Guantanamo Bay, Turkistani was not captured on the battlefield, nor was he a suspected terrorist. Instead, he was swept up in the confusion that marked the early days of the U.S. war in Afghanistan, and even as a potential ally found himself with no recourse to challenge his detention.

''The crowning irony is that he is an enemy of bin Laden, who was charged with conspiring to kill him, and we hold him prisoner today,'' said Sabin Willett, a lawyer who has filed a petition with the U.S. District Court in Washington on Turkistani's behalf. ''It's heartbreaking that we throw people into jail to rot.''

Turkistani is one of nine detainees who live at Guantanamo Bay's Camp Iguana, a less restrictive area of the prison where detainees have limited privileges including access to television and a few DVDs. Besides five Chinese Uighurs who have not been accepted by any country, there is a Russian, an Algerian and an Egyptian. All have been cleared for release but have not been given their freedom.

A former U.S. official familiar with detention operations said mistakes were made in Afghanistan, when some detainees were shipped to Cuba because space at the U.S. facility in Bagram was limited and there was no clear plan on where to house suspected enemy combatants.

''It's possible to get stuck there if you don't have a state,'' the former official said. ''Particularly at that time, when there were a lot of people getting picked up in Afghanistan, cases people were unsure about tended to end up in Cuba. People did get caught up in the situation.''

Another U.S. official familiar with Guantanamo Bay said it is likely that other ''stateless'' people will surface as the military prepares to release more detainees.

The Defense and State departments are working to return such people to their home countries, if possible, and have unsuccessfully tried to persuade at least 20 nations to take in the Uighurs—including Sweden, Finland, Switzerland and Turkey.

''The government is serious about finding a place for resettlement for the Uighurs and will continue diplomatic efforts to accomplish that goal,'' said Lt. Col. Mark Ballesteros, a Pentagon spokesman. ''The United States has made it clear that it does not expel, return or extradite individuals to other countries where it believes it is more likely than not they will be tortured.''

Turkistani is one of more than 200 Guantanamo Bay detainees who have filed habeas corpus petitions in U.S. District Court in Washington, arguing that they are being held unlawfully and asking the court to order their release.

Turkistani told his lawyers that he was deported to Afghanistan from Saudi Arabia sometime in 1997, after he was jailed for alleged possession of hashish. Turkistani said he was given fake Afghan identification and put on a plane from Jeddah to Kabul because the Saudi government did not recognize him as a citizen. He said that Afghan officials detained him for six days before releasing him.

He said he made his way to Khost, Afghanistan, and befriended an Iraqi man. Before long, he and his friend were arrested by four Arab al Qaeda members. Turkistani said he was accused of being a Saudi spy, interrogated and tortured.

Fearing for his life, after 20 days of severe beatings and sleep deprivation, Turkistani said he ultimately gave what he called a ''lengthy story'' about how the Saudis had sent him there to kill bin Laden. He was turned over to the Taliban and held in Kandahar for more than four years.

Susan Baker Manning, another lawyer representing Turkistani who met with him last month, said he denies allegations that he tried to kill bin Laden and confessed only under torture. Bin Laden, however, asserted in a statement in December 1998 that Turkistani and two accomplices had been hired by Saudi Arabian officials to kill him and failed.

Foreign news reports have indicated that the attack, allegedly by poison, caused bin Laden's kidneys to fail and netted Turkistani and his alleged accomplices hundreds of thousands of dollars.

Manning said that the government has been challenging lawyers' efforts to represent Turkistani, and that he has become intensely frustrated by his lengthy confinement.

''It's entirely possible that it's just a mistake,'' Manning said. ''The enemy took away his life for 4½ years, and we reward him for that by taking away his life for another four years. He clearly opposed al Qaeda and the Taliban, and he still feels that way. He's not a huge fan of the U.S. anymore.''

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[From the Washington Post, Dec. 13, 2005]

COURT MAY HEAR CHINESE (UYGHUR) DETAINEES

(By Josh White)

A federal judge in Washington said yesterday that he will consider allowing two detainees in the military prison at Guantanamo Bay, Cuba, to appear before him in court to challenge their confinement, telling lawyers that the ethnic Uighurs who have been cleared for release have been held too long.

U.S. District Judge James Robertson said he believes the case of the Uighurs (pronounced wee-gurs ) presents ''a genuine dilemma'' because the government has determined they are not enemy combatants but has not found a country to accept them. U.S. officials are not willing to send the Uighurs—Muslims who are seeking their own homeland on what is now part of northwestern China—to their native country for fear that they would be tortured or killed.

U.S. authorities have tried to persuade nearly two dozen nations to provide refuge for the Uighurs but have refused to allow them into the United States.

No Guantanamo Bay detainee has been allowed to travel to the United States and appear before a federal judge. The government has fought efforts at judicial review after a 2004 Supreme Court ruling entitling detainees to a ''competent tribunal'' to determine whether they are enemy combatants. The issue is currently before the appellate court for the District of Columbia Circuit.

Government lawyers are concerned that such a move could allow the Uighurs to immediately apply for asylum when they arrive on U.S. soil.

But Sabin Willett, an attorney for the detainees, said his clients are essentially on U.S. soil already and asked the judge to consider granting them a provisional ''parole'' that would allow them to live with ethnic Uighurs in the Washington area while their cases are considered.

Robertson, who in August sought more time to consider the cases, said yesterday that he is frustrated by the government's inability to move forward, essentially stranding five Uighurs who have been housed in a

part of the detention facility known as Camp Iguana, which is less restrictive than the rest of the prison. The five Uighurs are living with four others at the camp as they await a country to accept them.

The Uighur detainees have been held, without charges, for more than four years since their arrests in the Middle East.

The judge said he had three options: deny the detainees' motion and allow the case to go to an appellate court; order them to appear before him for a hearing on their immediate release; or order the government to release them outright ''and see what happens, see how the government responds.''

''As far as I can tell, nothing is happening,'' Robertson said, adding that he doesn't believe diplomatic progress has been made. ''The time has stretched out to the point where indefinite is not an inappropriate word to describe what is happening.''

Terry Henry, a Justice Department lawyer, said that government officials have been working on a diplomatic solution but that he could discuss it only in private. Robertson declined to hear the information off the record.

''The government is serious about finding a place for resettlement for the petitioners,'' Henry said.

The Uighurs, through their lawyers, have argued that because they are not a threat they should be moved to more hospitable living conditions and have asked to be released to live in the Washington area. Willett said his clients have gone from elation in August—when they were moved to Camp Iguana and given hope of release—to frustration as their cases have dragged on.

''I am deeply concerned about the human impact of the indefinite nature of this,'' Willett said.

Rabiya Kadeer, president of the Washington-based International Uyghur Human Rights and Democracy Foundation, attended the brief hearing yesterday and pledged to provide homes and jobs for the Uighurs should they be released to the United States.

## HONORING WINTER WONDERLAND WALK FOR THE CURE DAY

Mr. LIEBERMAN. Mr. President, breast cancer is one of the most frequently diagnosed cancers in women. More than 211,240 new cases of breast cancer in women will be diagnosed in the United States in 2005. In my own State of Connecticut, more than 2,600 women are expected to be diagnosed and 530 are expected to die from breast cancer this year. Overall, it is believed that 1 in every 10 women will develop breast cancer at least once in their lifetime.

The best defense against breast cancer, is early detection. The sooner one can detect breast cancer, the better the chances that the disease can be successfully treated. It is because of this that the American Cancer Society suggests that all women age 40 and over have a mammogram annually. As important, women must learn to do regular self breast exams.

Women generally will understand their bodies better than doctors. In Connecticut, early detection from mammograms and self breast exam has helped our State achieve a 5-year survival rate, for those women diagnosed with breast cancer, of 97 percent. That is one of the highest such survival rates in the country.

As successful as my State has been, we have not been successful enough. We must strive to increase awareness and education of breast cancer so that all women are aware of the risk it poses and the indisputable benefits of early detection. We must increase research into the relationship between environmental exposures, genetic predisposition, and breast cancer risk and also seek new drugs and tools that will allow health care professionals to better treat breast cancer patients with the goal of cure.

It is in this spirit on January 21, 2006, Eastern Mountain Sports Connecticut stores will sponsor the Winter Wonderland Walk for the Cure to benefit both breast cancer research and the Connecticut chapter of the Susan G. Women Breast Cancer Foundation, at Tarrywile Park in Danbury, CT.

Therefore, it is my pleasure to join Connecticut's Governor, M. Jodi Rell, herself a breast cancer survivor, in celebrating, in recognition of the need to increase awareness about breast cancer and the need for early detection, January 21, 2006 as Winter Wonderland Walk for the Cure Day in Danbury, CT.

## HUMAN RIGHTS VIOLATIONS IN ETHIOPIA

Ms. CANTWELL. Mr. President, I rise to speak on the disturbing reports of political chaos in Ethiopia. With allegations of vote tampering and emerging pictures of large-scale human rights abuses taking place in Ethiopia, that the administration must impress upon Prime Minister Meles Zenawi and other global neighbors, that severe consequences follow actions which undermine democratic ideals.

Ethiopia held its first ever democratic elections on May 15, 2005. Revelations since then of violence and mass detention of Ethiopian citizens by the Meles government are not only alarming and disconcerting to me and the American people who have supported the country in its effort to advance the cause of democracy. It is regretful to have to witness a regress in democratization.

Roughly 90 percent of Ethiopia's populace turned out for the democratic election. Rather than a sentiment of accomplishment or progress, the mood of the country remains nihilistically somber. According to international human rights observers, increased repression of the Ethiopian people is connected to the seeming loss of power from the ruling Meles government to the opposing party, the Coalition for Unity & Democracy, CUD—has shown by early vote counts during the election. With the Meles government accused of voting irregularities, it is not surprising that the people of Ethiopia protested the unofficial election results.

Recent reports of human rights abuses in Ethiopia range from arrest and intimidation by government authorities and illegal arrests of innocent people, including ranking members of the CUD party and media representatives, to the loss of life. For example, some 14,000 people were detained when riots ensued following the election. Among other journalists, Getachew Simie, former editor of the Amharic-language weekly, and Leykun Dngeda, former publisher of the Dagim WonchifWeekly, have been given jail sentences for covering the anti-government protests. Even Prime Minister Meles reported that 48 people were killed last month in relation to the unrest caused by the alleged fraud in the May polls.

Prime Minister Meles must fulfill his good faith commitment to human rights. With any successful transition to democracy, civil society requires the firm accountability of its government authorities. Until the Meles government brings an end to the intimidation of its people, political unrest will remain high and America's support for the democratization of Ethiopia will be muted by concern for the country's political instability.

## TRIBUTE TO SENATOR EUGENE McCARTHY OF MINNESOTA

Mr. COLEMAN. Mr. President, Minnesota and the Nation have lost a great leader and deep thinker, Senator Gene McCarthy of Minnesota. He played an import part in the history of this body and of this Nation, and we should carefully consider the lessons of his unique and deeply significant public life.

Gene McCarthy has been described as a philosopher who was a Senator. In his youth, many describe Gene as the brightest of scholars and later in his life; he was celebrated as skilled poet. In between, he was a five term Congressman and two-term Senator. His time in Washington and on the national political scene was a display of thoughtfulness, serious inquiry, and passionate pursuit of the truth. In the business of politics where there is safety in conformity, Gene McCarthy celebrated the role of the maverick. He says his role was to provoke thought and debate in our system and ensure we adhere more closely to lasting principles.

Eugene Robert McCarthy was born in the town of Watkins, in rural Meeker County, MN, on March 29, 1916. He began a life time ofleing in the schools of Watkins. He graduated from St. John's University, Collegeville, MN, in 1935 with the highest GPA in the school's history. He also studied at the University of Minnesota in Minneapolis until 1939. Professionally, he was a high school teacher in Minnesota and North Dakota for 5 years and eventually became a professor of economics and education at St. John's University from 1940 to 1943 an instructor in sociology and economics at St. Thomas College, St. Paul, MN, from 1946 to 1949.

In 1944, his service to the United States began during World War II, when he was a civilian technical assistant in the Military Intelligence Division of the War Department.

He was first elected to the U.S. Congress as a Representative from Minnesota in 1948 and served five terms. In 1958, he won a seat in the Senate where he remained for two terms. One of the focuses of his Senate career was the work of the Senate Foreign Relations Committee, which has been a common interest of most of Minnesota's Senators and an indication of the strong international character of our State.

I first became aware of Gene McCarthy in 1967 when I was campus organizer at Hofstra University. In a time of boiling-over passions, I remember being impressed with Gene McCarthy's thoughtfulness and seriousness. He was an unlikely leader for ''youth revolution,'' but he balanced our youthful over-exuberance with a steady articulation of principles and commitment. He encouraged young people to ''Get Clean with Gene:'' to stop ''tuning in, turning on and dropping out'' and to clean up our act and get involved in the political process. He knew that a movement based on self-indulgence was doomed to failure.

Gene McCarthy's life predates the experience of contemporary American youth, but still has important lessons for them. First, political involvement should not rest on raw emotion. Instead, to sustain your position you need to ''do your homework,'' which could mean years of study.

Second, you should not be intimidated by the generation in power. The great movements of history have been led and supported by young people, so the force of youthful enthusiasm should never be underestimated. Third, Gene McCarthy demonstrated that you earn the right to have your ideas taken seriously by engaging responsibly in the political process. He believed that the solution to all problems in a democracy is more democracy, which means participation, ideas, hard work and perseverance. His personal experience in 1968, even though it was politically unsuccessful, opened a door into the political process that can't be closed. Young people of all political persuasions should seize that opportunity and help shape the world in which they will grow old.

In 1968, Gene McCarthy certainly seized opportunities. He announced that he was willing and available to be President in November of 1968 and two months later stunned President Johnson, and the political world with a close second place finish in the New Hampshire primary. His success encouraged Robert Kennedy to enter the race and President Johnson withdrew shortly thereafter. McCarthy did not win the nomination, which went to fellow Minnesotan Hubert Humphrey, but he changed the dynamics of politics in America. He helped create the phenomenon of bringing young people into the process in large numbers to challenge the power of the ''smoke filled room.''

When Gene McCarthy left the Senate, he returned to the place he always was most at home: the world of ideas and words. When you look at the list of the 15 books he published, it is remarkable to see that they are either challenging works of non-fiction policy analysis or poetry. As a poet, Gene McCarthy probably knew Samuel Johnson's statement that ''poetry is the art of uniting pleasure with truth.'' That sums up his life.

Like a lot of Minnesotans, Eugene McCarthy took great pleasure not in the usual ways, but through service. He served as a teacher. He served as a scholar. He served as a public policy leader. He served as a motivator and organizer of youth. He served as a brave voice, challenging the powerful status quo. And he served as a poet, rendering great ideas into beautiful words.

Gene McCarthy lived a bold and uncompromising life, which is the only kind of life that creates real change. He was always more interested in the truth than in people's opinion of him. He lived out Amelia Earhart's statement that ''Courage is price that life exacts for granting peace.'' His life was about living out the courage of his convictions and that was his peace. He changed a nation by choosing that tough road instead of a life of compliance.

We are grateful for his service and memory, and we should all be inspired to take up his courage of conviction for the new chapters of American challenge and progress ahead.

## EXTEND RELOCATION EXPENSES TEST PROGRAMS

Ms. COLLINS. Mr. President, on Tuesday, December 20, I introduced a simple but important bill that would allow an existing General Services Administration, GSA, program for streamlined Government employee relocations to continue for an additional 4 years. Under a pilot program enacted in 1998, government agencies including GSA, Customs and Border Protection, and the Department of Defense have been able to relocate staff in a more economical manner than what can be done under the existing Federal relocation regulations. This innovative and cost saving test program, known as the Voluntary Relocation Program, provides Government agencies additional flexibility to relocate personnel to meet mission critical staffing needs and, according to Customs and Border Protection, has resulted in a cost savings of nearly $25 million in their organization alone.

I am very pleased that Senators LIEBERMAN and AKAKA have joined me in cosponsoring this legislation.

The Department of Homeland Security began using the Voluntary Relocation Program to relocate hundreds of Border Patrol agents to critical U.S. border locations after the terrorist attacks of September 11, 2001. As part of its new mission to protect national borders from security threats, agents from the Office of Border Patrol, OBP, eagerly volunteered to transfer to border locations deemed most vulnerable. However, these transfers took a long time to process and were very costly under the Federal travel regulations, FTR.

According to Customs and Border Protection, CBP, relocation of personnel under the Federal travel regulations typically cost the Federal Government an average of $72,000 per Border Patrol agent move. Understandably, the agency's ability to relocate significant numbers of Border Patrol agents was limited, so customs and border protection, CBP, sought alternative funding sources.

Under this voluntary program, employees receive a lump-sum payment to cover relocation costs, rather than submitting expense reports supported by receipts. Transferees that choose to relocate to a new duty station under the Voluntary Relocation Program manage the details of their own move and are fully responsible for determining how to spend the pre-determined lump-sum payment allocated by the Federal Government. Furthermore, employees enjoy greater input in how funds are allocated and transferees have more control over the logistics of their move. To date, the VRP has saved customs and border protection more than $23,500,000 in Border Patrol agent relocation costs.

This Voluntary Relocation Program has provided both the government and its employees with both reduced administrative burdens and increased responsiveness to employees and the organization's mission.

From April 2004 through September 2005, CBP processed 435 relocations at an average cost of $16,888 per move. Interim reports published by customs and border protection on the VRP indicate that participating employees are satisfied with the program and are interested in its continuation. It is anticipated that if the VRP program is extended, ''several hundred'' CBP agents will seek to take advantage of the VRP for career ladder promotions within the first year of it being offered. Based upon the promise of the program's early results, the continuation of the VRP test program would benefit national security needs and the agency's mission.

I believe that the VRP is an excellent example of how Government can work better and more cost effectively to best serve the interests of the public and government employees. This legislation would allow Federal agencies to provide an additional relocation incentive that would assist them in the accomplishment of their mission. I urge my colleagues to join me, Senator LIEBERMAN and Senator AKAKA in support of this legislation.

## HEALTH AND WELFARE RELIEF ACT OF 2005

Mr. BAUCUS. I support the Health and Welfare Relief Act of 2005. This bill

will provide funding for important initiatives that take effect in January 2006, just a few days from now.

This morning the Senate passed, by the slimmest of margins, S. 1932, legislation to cut about $40 billion from mandatory spending programs over the next 5 years. I did not support S. 1932 because I believe it contains bad policy on Medicaid, on welfare, and on child support enforcement, among other things.

For example, S. 1932 includes $5 billion in cuts to the child support enforcement program, which will mean that an estimated $19.6 million in child support funds will go uncollected in Montana over the next 10 years. That is money that should go to needy Montana kids.

As for Medicaid, S. 1932 contains almost $2 billion in increased copays for Medicaid beneficiaries, as well as other Medicaid cuts. There are right ways to cut health care costs, through greater efficiencies that will save more money over time, and there is a wrong way to cut costs: on the backs of the Americans who can least afford to pay more for their health care. S. 1932 goes the wrong way and ignores the Senate's strong instruction to protect Medicaid beneficiaries from deep spending cuts. Last week 75 Senators supported a motion I offered in the Senate instructing budget conferees not to come back with a bill that included higher Medicaid copays and benefit cuts. Passage of S. 1932 is inconsistent with that vote.

S. 1932 is bad news for the welfare program as well. Despite a Senate vote of 64 to 27 in support of removing TANF from S. 1932, the bill that the Senate passed today does just that: it reauthorizes TANF through the budget reconciliation process, with a punitive and unnecessarily austere set of provisions. The TANF Program, originally passed in 1996, has successfully reduced welfare caseloads and focused on moving parents from welfare to work. Changes to the TANF Program should build on the success of 1996 reforms, not reverse that success, as S. 1932 will ultimately do.

Unfortunately, S. 1932 takes something that is not broken—and fixes it. For example, S. 1932 would raise work requirements without providing the funding needed to help States get people working. In fact, while S. 1932 includes $1 billion in additional funding for childcare, that is $7.4 billion short of what the Congressional Budget Office estimates to be the cost to States of meeting the TANF work requirements under this bill.

The Health and Welfare Relief Act would extend TANF for an additional year, maintaining current policy on this important program. The Health and Welfare Relief Act would also extend transitional medical assistance, TMA, for an additional year, a program that is critical for helping families make the transition from welfare to work.

The Health and Welfare Relief Act also contains a fix to the Medicare physician payment formula, which is set to cut Medicare physician payments by 4.4 percent on January 1. It prevents a cap on Medicare physical therapy from taking effect. And it extends an important provision for small rural hospitals' outpatient departments, helping them stay afloat. The bill also provides $60 million for CMS administrative funding, which should be spent to help educate seniors about the new Medicare drug benefit. And it contains $80 million for important legislation that I have sponsored related to high-risk pools, which are often the insurer of last resort.

Finally, the Health and Welfare Relief Act includes important legislation providing relief to individuals and States harmed by Hurricane Katrina. Like the Lincoln amendment voted on in the Senate November 3, this bill contains provisions to: provide temporary Medicaid relief to Katrina survivors; help States struggling to meet health care costs incurred as a result of Katrina; and assist providers dealing with Katrina-related uncompensated care costs.

I support the minority leader's efforts to pass these timely and critical provisions through the Health and Welfare Relief Act of 2005. While I do not support S. 1932, we should take the positive elements of that bill—as well as important provisions to aid Katrina victims—and pass them today.

## NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT

Mr. INOUYE. Mr. President, I rise to seek clarification from our esteemed majority leader, Senator FRIST, on the scheduling of S. 147, the Native Hawaiian Government Reorganization Act, for consideration of the full Senate.

As you may recall, in December of last year, the majority and minority leaders joined us in reaching agreement on a schedule for the Senate's action on the Native Hawaiian Government Reorganization Act bill with Senators DOMENICI and KYL. Specifically, in an exchange of correspondence that was made part of the CONGRESSIONAL RECORD for the 108th session of the Congress, the leaders agreed that S. 147 would be brought before the Senate on or before August 7, 2005.

Mr. AKAKA. Mr. President, we commend our majority leader for his diligent efforts to secure the agreement of other Senators so that the Senate could proceed to consideration of this measure that is so important to the citizens of Hawaii. I know that Senator INOUYE joins me in expressing our deep appreciation for our leader's action in laying down a cloture petition prior to the August recess when unanimous consent could not be achieved.

However, when the Senate reconvened in September, the tragic devastation of Hurricane Katrina clearly demanded the Congress's immediate action, and thus, Senator INOUYE and I agreed to the proposal of the minority and the majority leader, that the cloture petition be vitiated.

As we now approach the end of the first session of the 109th Congress—with pressing matters requiring the Nation's attention once again moving the Senate's consideration of S. 147 to the sidelines—we seek the guidance of the majority leader as to when our Leader anticipates that this measure may be brought before the Senate.

Mr. FRIST. Mr. President, I thank the Senators from Hawaii for their review of our actions and intent in securing the Senate's action on S. 147. In addition to our two Senators from Hawaii, the Governor of Hawaii has consistently sought our action on this bill, and I am fully committed to assuring that the measure is brought before the Senate early in the next session of the Congress.

Mr. President, because a few of our colleagues are apparently not inclined to allow the bill to be considered under unanimous consent, it may be necessary to once again file a cloture petition to enable the measure to be given the Senate's full consideration. I want to assure my colleagues from Hawaii that the commitment I made in December of last year remains firm, and that I will work with them to take the appropriate steps to assure Senate action on S. 147 early in the second session of the 109th Congress.

Mr. AKAKA. Mr. President, I thank the majority leader for his clarification and his commitment. We look forward to working with both leaders to bring S. 147 to the Senate floor at the earliest possible time in the second session of the 109th Congress.

## ON THE PASSING OF EUGENE McCARTHY

Mr. OBAMA. Mr. President, I rise today to honor the memory of Senator Eugene McCarthy, who passed away earlier this month.

I did not have the pleasure of knowing him. But I know how powerful and stirring he was—a man who was not afraid to speak the truth. A man who, in 1968, had already resided in the corridors of power for nearly 20 years, but had not been corrupted by them.

Accomplished and beloved by his constituents, Senator McCarthy could have rested on his laurels and kept his views to himself; he could have toed the line in the name of unity and loyalty to the president.

But that was not in Senator McCarthy's character. There is something about Minnesota that produces people and politicians who care more about what is right than about being liked. In this tradition, he was a clarion voice of courage and conviction.

Senator McCarthy retired after 22 years of service in Congress, but he never abandoned his beliefs or moderated his tone. He was not interested in conforming to society's expectations

for an elder statesman. Nor was he afraid to turn his wit against his adversaries when discussing their policies with which he disagreed.

While he took more than his share of criticism, he stuck to his principles and gave as good as he got. The Senate is better because Eugene McCarthy served here, and the country is as well. He will be missed.

## ADDITIONAL STATEMENTS

### CONGRATULATING HAWAII'S NATIONAL FOOTBALL CHAMPIONS

• Mr. AKAKA. Mr. President, I rise to congratulate our national championship football team from Hawaii, the Lihue Patriots Pee Wee team, which won the Pop Warner Division II National Championship in Orlando, FL, on December 9, 2005. The Patriots are the first from Hawaii to win a Pop Warner national title.

The Patriots won the right to compete for the national championship by beating the undefeated East Tampa Bandits, 14 to 6, in a thrilling come from behind victory. In the championship game, the Patriots shut out the Hollister Vikings from San Jose, CA, 14 to 0, earning the Tomlin Championship trophy for the Pop Warner Division II Pee Wee bracket for 9- to 11-year-olds.

The Lihue Patriots Pee Wee team members are: Darren Acoba, Taran Tani, Bron Dela Cruz, Kekoa Agustin, Kevin Reyes, Kalen Kimura, Henry Rodrigues, Jonathan Butac, Travis Koga, Austin Furumoto, Isaac Ramboyon, John Das, Rolland Fukushima-Peahu, Austin Oshiro, Erin Doi, Dustin Ferreira-Kashima, Shane Iwata, Shawn Taguas, Trey Smith, Wailea Kerr, Micah Hanano, and Isaiah Prunty. The team is coached by Mario Longboy, Bradley Hiranaka, Eugenio Nacnac, Craig Koga, Ralph Suniga, and Layton Tani. The Patriots are also supported by managers Tyler Manibog, Christie Kashima, and Johnny Pongasi and team moms Lori Koga and Jolly Iwata.

I congratulate the Lihue Patriots on their history making victory, and I wish all of them the best in their future endeavors, in life and on the playing field. And I extend the same congratulations to all players and coaches who participated in this year's Pop Warner National Football Championships on a job well done.•

### IN MEMORY OF PRESTON ROBERT TISCH

• Mr. LAUTENBERG. Mr. President, I rise to pay my respects to someone I knew very well, Preston Robert Tisch, who passed away last month of brain cancer. He was a distinguished American who, along with his brother, Laurence, built a giant financial enterprise. Bob was eminently successful at everything he did, particularly in his role as a husband, father and grandfather.

I, like all who had contact with Bob Tisch, treasure my times with him. I send my deepest condolences to his wife and family.

I ask unanimous consent to have printed in the RECORD a statement released by the New York Giants organization that so perfectly describes the life and accomplishments of Bob Tisch.

He will be long remembered by all who knew him.

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

(November 15, 2005)

PRESTON ROBERT TISCH (1926–2005)

Preston Robert ''Bob'' Tisch, the Giants' Chairman and Co-Chief Executive Officer, one of the nation's most respected and successful businessmen, a former United States Postmaster General, and an extremely generous philanthropist, died Tuesday night.

Tisch passed away from inoperable brain cancer, which was first diagnosed in the summer of 2004. He was 79. His death comes just three weeks after the passing of his fellow owner, Wellington Mara, who died of cancer on Oct. 25 at the age of 89.

Tisch realized a longtime dream in 1991 when he completed negotiations with Wellington Mara's nephew, Tim Mara, and his family and paid $75 million for a 50 percent interest in the Giants.

''I was very fortunate,'' Tisch said in a 2002 interview. ''I got a call from (former Cleveland and Baltimore owner) Art Modell telling me that Tim Mara wanted to sell his half of the team and asking me if I would be interested in purchasing it. I met with Wellington Mara and John Mara and said I'd be very interested. There were no problems with them, and then I bought my share of the team from Tim Mara. It's been a great relationship and a great boon to me. I'm very happy to be the 50 percent owner of the New York Giants.''

Tisch played an active role in the organization. As a member of the National Football League's Finance and Super Bowl Policy Committees, he attained a prominence in the sports arena equal to his position in the world of business.

Owning the Giants was one of many careers Tisch pursued simultaneously. Forbes magazine ranks him 56th on its list of the country's 400 wealthiest people and estimates his net worth to be about $3.9 billion.

He was the Chairman and Director of the Loews Corporation, one of the country's most successful financial companies. The company, with a 2004 net income of $1.2 billion and assets exceeding $74 billion, owns and operates 91 percent of CNA Financial Corporation; 100 percent of Lorillard; 100 percent of Boardwalk Pipelines, which consists of Texas Gas Transmission and Gulf South Pipelines; 52 percent of Diamond Offshore Drilling; 100 percent of Loews Hotels and 100 percent of Bulova.

Tisch served as Postmaster General of the United States from Aug. 1986 until returning to New York in March 1988. Prior to his appointment as Postmaster, he served as President and Chief Operating Officer of Loews Corporation and its corporate predecessor, Loews Theaters, Inc., a position held from 1960 until his appointment as Co-Chairman and CoCEO.

Tisch also served as Chairman of the New York Convention & Visitors Bureau for 19 years and currently serves as the Bureau's (now called NYC & Co.) Chairman Emeritus. He was also founding Chairman of the New York City Convention and Exhibition Center Corporation and Chairman of the Citizens Committee for the Democratic National Conventions held in New York City in 1976 and 1980.

In May 1990, Mayor David Dinkins appointed Tisch as New York City's Ambassador to Washington, D.C. Through 1993, he served as a liaison between the City of New York and his friends and colleagues in both the national government in Washington, D.C. and the business community in New York City.

From 1990–1993, Tisch served as Chairman of the New York City Partnership, Inc. and the New York Chamber of Commerce and Industry, where he was instrumental in developing a campaign to enhance New York's position as an international business center. After completing his stint as chairman, Tisch remained on the Board of Directors of both organizations, now merged.

Tisch was also a Trustee of New York University.

The Giants, however, were truly a labor of love for Tisch, a lifelong sports fan. He attended every Giants game, home and away, and spent as much time working in his stadium office as possible. His two sons are now important members of the organization: Steven as executive vice president and Jon as treasurer.

The process of going from fan to owner took at least three decades for Tisch.

''I came to New York in 1960, and a couple of propitious things happened,'' he said. ''Our company owned a radio station at that time, WHN. During the 1950s they broadcast Giants games. The president of the radio station had ten 50–yard-line tickets at Yankee Stadium. When we sold the radio station he decided he wanted to stay with us, so he came over to Loews Theaters to become the controller. So for about seven or eight years, I had the use of these tickets.

''Also, when we came to New York we moved to Scarsdale, and I got to know Allie Sherman, who was then coach of the Giants. Actually, Allie's son Randy and my son Jon were born one day apart. So we got to know the Sherman family. Then in 1975 or '76, Pete Rozelle moved to Harrison. We lived in the city, but we have a house in Harrison, which was a mile away from where Pete Rozelle and his family resided. We became very friendly with Pete Rozelle. So I have a history in the last 40-some odd years of being involved. I went to most of the owners meetings and all the Super Bowls with Pete Rozelle. I was chairman of a group of his friends called Rozelle's Raiders—I was responsible for getting him to the right place at the right time. He finally gave me a whistle and a sign that said 'Rozelle's Raiders.' I've been very lucky. In my own mind, I've been involved in football since 1960.''

It was about that time that Tisch first began to consider buying a professional team.

''I had tried several times before (purchasing his interest in the Giants),'' he said. ''Steve Ross, who ended up as CEO of Time-Warner, Inc. and I tried to buy the Jets in about 1967 or '68 and it didn't work out. I looked at other things. In 1988, when I came out of the Postal Service, I decided I would try to buy a sports team. I looked at many of them, both in football and basketball. I looked at the Dallas Cowboys and a couple of other teams. But I made up my mind I was never going to buy a team that was more than one hour from New York. I was interested in becoming owner of the new franchise that was in Baltimore. We were putting together a group when the opportunity came about to become the 50 percent owner of the New York Giants, which I jumped at and dropped everything else.''

He completed the negotiations with Tim Mara just a few months after the Giants won Super Bowl XXV.

Tisch's business success was but a small part of his life's achievements. His generosity and commitment to civic and charitable causes was legendary. Tisch was a tireless and influential participant in civic affairs throughout his adult life.

In Feb. 2000, he helped found Take the Field, Inc., a non-profit organization dedicated to renovating and rebuilding the athletic fields at New York City's public high schools. Tisch, a product of those schools who graduated from Erasmus Hall High in Brooklyn, was Chairman of Take the Field, Inc. He launched the organization with a $1 million donation, and as of earlier this year had raised more than $147 million in public and private dollars.

Tisch and two partners in Take the Field, Tony Kiser and Richard Kahan, believed the private sector had to play a leading role in repairing sports fields at schools throughout the city that had been slowly destroyed by more than two decades of neglect. Tisch approached then-mayor Rudy Giuliani with his idea. The city agreed to match every dollar raised by Take the Field with three of its own, and the mission was to re-do every athletic field in the city that was classified as ''needy.''

''Take the Field is one of the most innovative and wonderful ideas of my life in the city,'' said New York Mets owner Fred Wilpon, one of Tisch's best friends. ''And it doesn't happen without Bob. At a time in his life when he could have just sat back and enjoyed everything he had accomplished, he went to work.''

That's what Tisch did throughout his life. He was a founding Co-Chairman of Citymeals-on-Wheels, President of the Board of Directors from 1993 to 2002, and later served on the Board as Honorary Chairman. He also served as chairman of Public Private Initiative, a public private partnership that raises funds for important community programs, from 1997 to 1998.

Tisch's philanthropy continued even after he became gravely ill. His family picked a physician at the Duke University Medical Center to supervise his treatment for the brain cancer. Tisch and his family recently donated $10 million to the Duke Comprehensive Cancer Center and the school's Brain Tumor Center.

The gift accounted for the majority of a $16.3 million package of subsidies that Duke will use to support research into the treatment of brain tumors.

''I was very, very impressed by the program at Duke, and very taken by more than just its medical approach,'' said Steve Tisch. ''For me, there was the intangible that became so important, of the spiritual and emotional commitment that these programs and their doctors have.''

Duke officials have pledged to use $5 million from the Tisch family to underwrite the hiring of additional researchers. The medical center is matching that with $5 million of its own money. Another $2.5 million from the Tisch family will finance the screening of drugs that might be useful in treating brain tumors. Duke officials are now are calling the treatment center the Preston Robert Tisch Brain Tumor Center.

Given his many accomplishments and interesting ventures, Tisch was asked in that 2002 interview what was most rewarding to him.

''My brother (Laurence, who died of cancer at age 80 two years ago today on Nov. 15, 2003) and I took the Loews Corporation from a corporation that did about $20 million worth of business and built it up to a $13 billon company, which is now run by the next generation,'' Tisch said. ''Building the company and seeing it grow has been extremely gratifying. I also enjoyed my time at the Postal Service when I was appointed Postmaster General. People said, 'How can you stand a job like that?' I loved it. I made one mistake—I stayed two years when I should have stayed three years.

''Then, of course, my involvement with the New York Giants has been very rewarding. I've been very, very lucky in my life and what I've been able to achieve.''

Everyone who knew him, worked with him or were touched by his generosity were just as fortunate.

Preston Robert Tisch was born on April 29, 1926 in New York City. He attended Bucknell University before entering the Army in 1944. After military service in World War II, he earned a B.A. degree in economics from the University of Michigan in 1948. Tisch is survived by his wife, the former Joan Hyman, and their three children, Steven, Laurie and Jonathan, and nine grandchildren.●

## BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT

● Mr. BURNS. Mr. President, today I join my colleagues, Senators NELSON, MIKULSKI, LANDRIEU, MURKOWSKI, BOXER, SNOWE, REED, ROBERTS, LAUTENBERG, DEWINE, SMITH, JEFFORDS, CORZINE, STEVENS, SARBANES, KERRY, LINCOLN, MURRAY, DURBIN, COLEMAN, FEINSTEIN, JOHNSON, COLLINS, SCHUMER, BAUCUS, COCHRAN, BROWNBACK, CANTWELL, CLINTON, DODD, LIEBERMAN, and STABENOW in cosponsoring S. 1272, Belated Thank You to the Merchant Mariners of World War II Act of 2005.

The contribution Merchant Mariners made during WWII have gone unheralded for far too long. The Merchant Marine is the forgotten service of World War II.

Although their numbers were small, they suffered the highest casualties of any service in World War II. Merchant mariners were responsible for transporting troops, tanks, food, fuel, airplanes and other supplies and, as a result, their likelihood of combat was extremely high. In fact, enemy forces sank over 800 of their ships between 1941 and 1944.

For more than 40 years, Merchant Mariners were denied any G.I. bill of rights benefits. In 1988, they were granted a ''watered down'' version of the G.I. bill of rights, but some portions of those benefits were never made available to them. In addition, they still have not received proper recognition as veterans for Social Security purposes.

This legislation would rectify that inequity by recognizing these American heroes with the status of ''veteran,'' and it would grant a small monthly stipend to these veterans or their widows in order to offset their lost benefits.

As a veteran, I will always seek to protect the honored place of our military heroes. I cherish their service, and I will do everything in my power to support their interests. I look forward to working with my Senate colleagues to pass this important piece of legislation.●

## RECOGNIZING THE NEWARK HUD OFFICE

● Mr. LAUTENBERG. Mr. President, it is with great pleasure that I rise today to pay tribute to the Newark field office of the U.S. Department of Housing and Urban Development on the occasion of its 40th anniversary in my home State of New Jersey.

The Department of Housing and Urban Development, HUD, administers programs that increase homeownership, provide aid for housing for lower income people, support community development, and increase access to housing free from discrimination.

For 40 years, the staff of the Newark field office has embraced this mission and effectively partnered with faith-based and community organizations to help provide housing assistance to the homeless, elderly, people with disabilities, and people living with AIDS.

Today, under the leadership of Diane Johnson, the Newark field office is leading the way in helping more low- and moderate-income New Jerseyans realize the American dream of becoming homeowners. For example, in the city of Trenton, the HUD-designated ''Homeownership Zone'' is helping first-time homebuyers and minority families purchase homes.

Since its creation in 1992, the HOPE VI Program has helped transform the HUD's approach to housing assistance for the poor. In New Jersey, HOPE VI has successfully generated over $1 billion to revitalize distressed public housing. This investment has changed the housing landscape in towns and cities throughout the State by replacing severely distressed public housing projects, occupied exclusively by poor families, with redesigned mixed-income housing.

The Housing Choice Voucher Program has grown into the dominant form of federal housing assistance, helping 65,000 low-income families in New Jersey afford decent, safe, and sanitary housing in the private market.

It is with great respect that I extend my warmest congratulations to the Newark field office on four decades of success and to Diane Johnson who has been a tireless advocate on behalf of HUD's programs and the people who benefit from them.●

## SILVER HIGH SCHOOL FIGHTING COLTS

● Mr. BINGAMAN. Mr. President, all over this great country in the last month or so, high school football championships have been won and lost. I am delighted to report that the team in my hometown of Silver City, NM, after decades of effort, has won the championship trophy in Class 4A football in New Mexico.

All who attended Silver High School—and all of us who attended it before it changed its name to that—are thrilled with this achievement. Seven

times in the past, our team has been in the final game, and seven times we have come in second. This year, the Silver High School Fighting Colts came away with the winner's trophy for the first time in the school's history.

This was accomplished under the leadership of Head Coach David Carrillo and his fine staff, and because of the skill and heart of all those enthusiastic players and their supportive families. They all have the congratulations and good wishes of those of us who have watched the team over the years. Somehow it is reassuring to know that no matter how old we get, we are always Colts.●

## RECOGNIZING MATRIX HUMAN SERVICES ON ITS 100TH ANNIVERSARY

● Mr. LEVIN. Mr. President, I would like to take this opportunity to recognize Matrix Human Services, one of Michigan's oldest and largest nonprofit social service organizations, as it celebrates 100 years of tireless and dedicated service.

Matrix Human Services was founded in 1906 by a small group of Catholic women, later known as the League of Catholic Women, who recognized a growing need to provide support for low income and at-risk populations in the Detroit Metropolitan area. Over the years as the League's membership continued to grow, it was able to dedicate more resources and personnel to its mission of fostering self-sufficiency and hope to those in need. These efforts ultimately lead to a broadened scope of services that sought to address the growing and diverse needs of the community, which grew into what we now refer to as Matrix Human Services.

Today, Matrix Human Services is a diverse organization with more than 300 staff members and dedicated volunteers, serving 30 locations across the Detroit Metropolitan area. It continues to focus on its mission to help prepare individuals and families to live a more positive, productive and meaningful life. Matrix Human Services has organized educational training, childcare, social work, mentoring, abuse prevention, and housing assistance for the homeless programs. Each year, Matrix is able to serve thousands of individuals through a network of specialized divisions that include Head Start Family Service Center, Project Transition Housing, Walter and May Reuther Senior Services, Barat Child and Family Services, Casa Maria Family Services, Vistas Nuevas Head Start, and Off the Streets.

I know my Senate colleagues join me in congratulating Matrix Human Services on its many years of excellent service and wish its staff, volunteers, and community partners many more productive years of service to the community.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and withdrawals which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGE FROM THE HOUSE

### ENROLLED BILL SIGNED

At 1:35 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 205. An act to authorize the American Battle Monuments Commission to establish in the State of Louisiana a memorial to honor the Buffalo Soldiers.

S. 652. An act to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin.

S. 1238. An act to amend the Public Lands Corps Act of 1993 to provide for the conduct of projects that protect forests, and for other purposes.

S. 1310. An act to authorize the Secretary of the Interior to allow the Columbia Gas Transmission Corporation to increase the diameter of a natural gas pipeline located in the Delaware Water Gap National Recreation Area, to allow certain commercial vehicles to continue to use Route 209 within the Delaware Water Gap National Recreation Area, and to extend the termination date of the National Park System Advisory Board to January 1, 2007.

S. 1481. An act to amend the Indian Land Consolidation Act to provide for probate reform.

S. 1892. An act to amend Public Law 107–153 to modify a certain date.

S. 1988. An act to authorize the transfer of items in the War Reserves Stockpile for Allies, Korea.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

## MEASURES REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 230. Concurrent resolution expressing the sense of the Congress that the Russian Federation must protect intellectual property rights; to the Committee on Finance.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 2015. A bill to provide a site for construction of a national health museum, and for other purposes (Rept. No. 109–212).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DURBIN (for himself and Mr. OBAMA):

S. 2156. A bill to designate the facility of the United States Postal Service located at 332 South Main Street in Flora, Illinois, as the "Robert T. Ferguson Post Office Building"; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. BOXER:

S. 2157. A bill to amend title 10, United States Code, to provide for the Purple Heart to be awarded to prisoners of war who die in captivity under circumstances not otherwise establishing eligibility for the Purple Heart; to the Committee on Armed Services.

By Mr. LIEBERMAN (for himself and Ms. COLLINS):

S. 2158. A bill to establish a National Homeland Security Academy within the Department of Homeland Security; to the Committee on Homeland Security and Governmental Affairs.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 2159. A bill to provide for reimbursement of the cost of certain projects at the Fern Ridge Dam, Oregon; to the Committee on Environment and Public Works.

By Mrs. BOXER (for herself and Mr. AKAKA):

S. 2160. A bill to amend the Higher Education Act of 1965 to authorize grants for institutions of higher education serving Asian Americans and Pacific Islanders; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INHOFE (for himself, Mr. DOMENICI, Mr. HAGEL, and Mr. NELSON of Nebraska):

S. 2161. A bill to amend the Safe Drinking Water Act to prevent the enforcement of certain national primary drinking water regulations unless sufficient funding is available or variance technology has been identified; to the Committee on Environment and Public Works.

By Ms. SNOWE:

S. 2162. A bill to foster local development by facilitating the delivery of financial assistance to small businesses, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mr. KERRY:

S. 2163. A bill to amend titles 10 and 38 of the United States Code, to increase and index education 31 benefits for veterans under the Montgomery GI bill to ensure adequate and equitable benefits for active duty members and members of the selected Reserve, and to include certain servicemembers previously excluded from such benefits; to the Committee on Veterans' Affairs.

By Ms. STABENOW (for herself, Mr. REID, Mr. BAUCUS, Mr. NELSON of Nebraska, Mr. BINGAMAN, Mr. KENNEDY, Mrs. CLINTON, Mr. ROCKEFELLER, Mr. DAYTON, MRS. LINCOLN, and Ms. MIKULSKI):

S. 2164. A bill to amend titles IV, XVIII, and XIX of the Social Security Act to improve the provision of care under the programs under such titles, and for other purposes; to the Committee on Finance.

By Ms. MIKULSKI (for herself, Mr. KENNEDY, and Mr. SARBANES):

S. 2165:. A bill to assist members of the Armed Forces in obtaining United States citizenship, and for otl1er purposes; to the Committee on the Judiciary.

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

S. 2166. A bill to direct the Election Assistance Commission to make grants to States to restore and replace election administration supplies, materials, records, equipment, and technology which were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita; to the Committee on Rules and Administration.

By Mr. SUNUNU (for himself, Mr. LEAHY, Mr. SCHUMER, Mr. LEVIN, Mr. DURBIN, Mr. HAGEL, Mr. CRAIG, Mr. KERRY, Mr. CARPER, Mr. AKAKA, Mr. REID, Ms. CANTWELL, Mr. CONRAD, Mr. LAUTENBERG, Ms. LANDRIEU, Mrs. CLINTON, Ms. MIKULSKI, Mr. PRYOR, Mr. KENNEDY, Mr. OBAMA, Mr. DODD, Mr. REED, Mr. ROCKEFELLER, Mrs. BOXER, Mr. JOHNSON, Mr. NELSON of Nebraska, Mr. KOHL, Mr. NELSON of Florida, Mr. SALAZAR, Mr. BINGAMAN, Mr. LIEBERMAN, and Mr. DAYTON):

S. 2167. A bill to amend the USA PATRIOT ACT to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to July 1, 2006; considered and passed.

By Ms. SNOWE (for herself and Mr. NELSON of Florida):

S. 2168. A bill to amend title XVIII of the Social Security Act to provide extended and additional protections to Medicare beneficiaries enrolled under part C or D or such title; to the Committee on Finance.

By Mr. CARPER (for himself and Mr. MARTINEZ):

S. 2169. A bill to amend the Fair Credit Reporting Act to provide for secure financial data, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. FRIST (for himself, Mr. BIDEN, and Mr. LUGAR):

S. 2170. A bill to provide for global pathogen surveillance and response; considered and passed.

By Ms. LANDRIEU:

S. 2171. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the temporary mortgage and rental payments program; to the Committee on Homeland Security and Governmental Affairs.

By Ms. LANDRIEU:

S. 2172. A bill to provide for response to Hurricane Katrina by establishing a Louisiana Recovery Corporation, providing for housing and community rebuilding, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. CLINTON (for herself and Mr. ROCKEFELLER):

S. 2173. A bill to assist pharmacies in facilitating enrollment of dual eligible populations under the Medicare prescription drug benefit; to the Committee on Finance.

By Mr. THUNE:

S. 2174. A bill to permit certain funds made available for the Wagner Service Unit of the Indian Health Service to be used to pay expenses incurred in keeping the emergency room of that Unit open 24 hours per day, 7 days a week, through September 30, 2006; to the Committee on Indian Affairs.

By Mr. KENNEDY (for himself, Mr. ROCKEFELLER, and Mr. REID):

S. 2175. A bill to require the submittal to Congress of any Presidential Daily Briefing relating to Iraq during the period beginning on January 20, 1997, and ending on March 19, 2003; to the Select Committee on Intelligence.

By Mr. BAYH (for himself, Mr. DURBIN, and Ms. LANDRIEU):

S. 2176. A bill to amend title 10, United States Code, to modify eligibility for income replacement payments for Reserves experiencing extended and frequent mobilization for active duty service; to the Committee on Armed Services.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. VOINOVICH (for himself, Mr. HAGEL, and Mr. BIDEN):

S. Res. 342. A resolution recognizing the Republic of Croatia for its progress in strengthening democratic institutions, respect for human rights, and the rule of law and recommending the integration of Croatia into the North Atlantic Treaty Organization; considered and agreed to.

By Mr. SESSIONS:

S. Res. 343. A resolution expressing the sense of the Senate that the week of December 19, 2005 should be designated ''Thank Our Defenders Week''; considered and agreed to.

By Mr. McCAIN (for himself, Mr. LUGAR, Mr. BROWNBACK, and Mr. REID):

S. Res. 344. A resolution expressing support for the Government of Georgia's South Ossetian Peace Plan and the successful and peaceful reintegration of the region into Georgia; considered and agreed to.

By Mr. BYRD (for himself and Mr. ROCKEFELLER):

S. Res. 345. A resolution recognizing the 100th anniversary of Fenton Art Glass, a beloved institution in West Virginia, that continues to contribute to the economic and cultural heritage of the State through its production of world renowned, hand-blown glass; considered and agreed to.

By Mr. BURR (for himself and Mrs. DOLE):

S. Res. 346. A resolution commending the Appalachian State University football team for winning the 2005 National Collegiate Athletic Association Division I–AA Football Championship; considered and agreed to.

By Ms. LANDRIEU (for herself and Mr. VITTER):

S. Res. 347. A resolution expressing the sense of the Senate that lenders holding mortgages on homes in communities of the Gulf Coast devastated by Hurricanes Katrina and Rita should extend current voluntary mortgage payment forbearance periods and not foreclose on properties in those communities; considered and agreed to.

By Ms. CANTWELL:

S. Con. Res. 74. A concurrent resolution correcting the enrollment of H.R. 2863; considered and agreed to.

By Mr. SANTORUM (for himself and Mr. LIEBERMAN):

S. Con. Res. 75. A concurrent resolution encouraging all Americans to increase their charitable giving, with the goal of increasing the annual amount of charitable giving in the United States by 1 percent; considered and agreed to.

## ADDITIONAL COSPONSORS

S. 438

At the request of Mr. ENSIGN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 484

At the request of Mr. WARNER, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 662

At the request of Ms. COLLINS, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 662, a bill to reform the postal laws of the United States.

S. 707

At the request of Mr. JEFFORDS, his name was added as a cosponsor of S. 707, a bill to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 757

At the request of Mr. CHAFEE, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 757, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 863

At the request of Mr. CONRAD, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 863, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centenary of the bestowal of the Nobel Peace Prize on President Theodore Roosevelt, and for other purposes.

S. 910

At the request of Ms. LANDRIEU, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 910, a bill to require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

S. 1002

At the request of Mr. BAUCUS, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 1002, a bill to amend title XVIII of the Social Security Act to make improvements in payments to hospitals under the medicare program, and for other purposes.

S. 1405

At the request of Mr. NELSON of Nebraska, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1405, a bill to extend the 50 percent compliance threshold used to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility and to establish the National Advisory Council on Medical Rehabilitation.

S. 1568

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 1568, a bill to enhance the ability of community banks to foster economic growth and serve their communities, and for other purposes.

S. 1841

At the request of Mr. CARPER, his name was added as a cosponsor of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 2076

At the request of Mr. LEAHY, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 2076, a bill to amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement officers.

S. 2083

At the request of Mrs. CLINTON, the names of the Senator from California (Mrs. BOXER) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 2083, a bill to prohibit the Assistant Secretary of Homeland Security (Transportation Security Administration) from removing any item from the current list of items prohibited from being carried aboard a passenger aircraft.

S. 2088

At the request of Mr. ALLARD, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 2088, a bill to assist low-income families, displaced from their residences in the States of Alabama, Louisiana, and Mississippi as a result of Hurricane Katrina, by establishing within the Department of Housing and Urban Development a homesteading initiative that offers displaced low-income families the opportunity to purchase a home owned by the Federal Government, and for other purposes.

S. 2109

At the request of Mr. ENSIGN, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from South Dakota (Mr. THUNE) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 2109, a bill to provide national innovation initiative.

S. 2134

At the request of Mr. SMITH, the names of the Senator from Wisconsin (Mr. KOHL) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 2134, a bill to strengthen existing programs to assist manufacturing innovation and education, to expand outreach programs for small and medium-sized manufacturers, and for other purposes.

S. 2140

At the request of Mr. HATCH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2140, a bill to enhance protection of children from sexual exploitation by strengthening section 2257 of title 18, United States Code, requiring producers of sexually explicit material to keep and permit inspection of records regarding the age of performers, and for other purposes.

S. 2145

At the request of Ms. COLLINS, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 2145, a bill to enhance security and protect against terrorist attacks at chemical facilities.

S. 2154

At the request of Mr. OBAMA, the names of the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. FEINSTEIN), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

S. CON. RES. 71

At the request of Mr. AKAKA, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. Con. Res. 71, a concurrent resolution expressing the sense of Congress that States should require candidates for driver's licenses to demonstrate an ability to exercise greatly increased caution when driving in the proximity of a potentially visually impaired individual.

S. RES. 253

At the request of Mr. SCHUMER, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. Res. 253, a resolution designating October 7, 2005, as ''National 'It's Academic' Television Quiz Show Day''.

S. RES. 340

At the request of Ms. LANDRIEU, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. Res. 340, a resolution expressing the sense of the Senate that lenders holding mortgages on homes in communities of Louisiana devastated by Hurricanes Katrina and Rita should extend current mortgage payment forbearance periods and not foreclose on properties in those communities until such time that Congress can consider legislation to provide relief to those homeowners.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself and Mr. OBAMA):

S. 2156. A bill to designate the facility of the United States Postal Service located at 332 South Main Street in Flora, Illinois, as the ''Robert T. Ferguson Post Office Building.''; to the Committee on Homeland Security and Governmental Affairs.

Mr. DURBIN. 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. 2156

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

**SECTION 1. ROBERT T. FERGUSON POST OFFICE BUILDING.**

(a) DESIGNATION.—The facility of the United States Postal Service located at 332 South Main Street in Flora, Illinois, shall be known and designated as the ''Robert T. Ferguson Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Robert T. Ferguson Post Office Building''.

Mr. DURBIN. Mr. President, today I am pleased to introduce legislation to designate the U.S. Post Office at 332 South Main Street in Flora, Illinois as the ''Robert T. Ferguson Post Office Building''.

Mr. Ferguson was a distinguished public servant who began his postal career at the Harvey, Illinois Post Office, where he worked as a city carrier from 1954 to 1957. He then moved to the Flora, Illinois Post Office where he worked his way up from clerk/carrier to Assistant Postmaster to Postmaster in 1986. During the final three years of his career before he retired in 1988, Robert Ferguson served as Postmaster in Collinsville, Illinois.

In recognition of his hard work and dedication, Mr. Ferguson received five Outstanding Superior Accomplishment Awards and qualified as a Postmaster Trainer on October 1, 1976. He worked tirelessly on behalf of postal workers and traveled throughout Southern Illinois training newly appointed Postmasters. He was well liked by his colleagues who knew they had a leader they could trust.

In addition to his active professional life, Robert Ferguson found time to serve his community. As President of the Clay County Shrine Club in 1992, he organized events to raise thousands of dollars for the Shriner's Hospital for Children. In 1996, he raised money to assist a local family after a storm destroyed their mobile home. In 2002, Mr. Ferguson created a Hospital Directory for Southern Illinois, which aid local citizens by providing phone numbers and addresses of local hospitals.

In 1996, the Flora Chamber of Commerce named Robert Ferguson the ''Outstanding Citizen of Flora''.

Mr. President, post offices are often designated in honor of individuals who have made valuable contributions to their community, State, and country. I can think of no more fitting way to permanently and publicly recognize Robert Ferguson's work than to name the Flora, Illinois post office in his honor. It would be a most appropriate way to commemorate his exemplary service to the Flora community and to postal workers and patrons throughout Southern Illinois.

By Mrs. BOXER:

S. 2157. A bill to amend title 10, United States Code, to provide for the Purple Heart to be awarded to prisoners of war who die in captivity under circumstances not otherwise establishing eligibility for the Purple Heart; to the Committee on Armed Services.

Mrs. BOXER. Mr. President, I am pleased to introduce legislation today to provide for the Purple Heart to be awarded to all prisoners of war who die in captivity, regardless of the cause of death. The ''Honor Our Fallen Prisoners of War Act'' was previously introduced by Representative BOB FILNER in the House of Representatives. I am proud to join him in this effort.

The ''Honor Our Fallen Prisoners of War Act'' would make members of the Armed Forces who die in captivity of any circumstance eligible for the Purple Heart. Currently, only prisoners of war who die during their imprisonment of wounds inflicted by an instrument of war are eligible for posthumous Purple Heart recognition. Those who die of starvation, disease, abuse, or other causes during captivity are not.

I believe this is an injustice to the thousands of POWs who paid the ultimate price in service to our Nation. The purpose of the Purple Heart is to honor those who are killed or wounded in action as the result of an act of an enemy of the United States. It makes no sense that prisoner of war camps—where thousands of Americans have been held against their will and have endured great suffering at the hands of enemy forces—are not considered a battlefield.

The legislation is retro-active to December 7, 1941 and would therefore include all POWs who have died in captivity since World War II.

The ''Honor Our Fallen Prisoners of War Act'' has been endorsed by the Tiger Survivors, Veterans of Foreign Wars, Military Order of the Purple Heart, Korean War Veterans Association, National League of POW/MIA Families, and a number of other prominent veterans organizations.

I urge my colleagues to support this important legislation.

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By Mr. LIEBERMAN (for himself and Ms. COLLINS):

S. 2158. A bill to establish a National Homeland Security Academy within the Department of Homeland Security; to the Committee on Homeland Security and Governmental Affairs.

Mr. LIEBERMAN. Mr. President, I am pleased to introduce today the National Homeland Security Academy Act of 2005. I am delighted that Chairman COLLINS has joined me in sponsoring this legislation.

Shortly after the Homeland Security Department was formed in 2003, I laid out my vision for what the country needed to do to protect against another terrorist attack, or major natural disaster, in a speech at George Washington University. Among the areas I identified as in need of additional work was the training of those who agreed to commit themselves to the protection of Americans here at home. At the time, I said we needed to make sure homeland security professionals were given the full range of skills necessary to make this country as safe as it should be and I proposed a National Homeland Security Academy to educate and train the best and brightest of our future leaders.

The bill Senator COLLINS and I are introducing today, the National Homeland Security Academy Act of 2005, is the fulfillment of that idea.

It was clear to me as I was working to create a Department of Homeland Security that we would need to find a way to make sure Department professionals, as well as the State and local officials with whom they work, understand the full scope and range of responsibilities entrusted to the Department—not just the details of their own particular jobs. This academy would accomplish that. It would cultivate leaders, teach the full range of skills necessary for robust homeland security, and provide cross-disciplinary and joint education and training to government officials at the Federal, State and local levels so that they can develop the bonds and relationships that will make their work more efficient and effective.

The National Homeland Security Academy Act of 2005 is the product of my work with the Chairman of the Homeland Security and Governmental Affairs Committee, Senator COLLINS, as well as homeland security experts, scholars, and education and professional development experts. Together, we have refined the concept of homeland security education and training to meet the Department's needs today and into the future.

The academy I envision would be a professional development institution, much like the War College created by the Department of Defense to provide its leaders with a deep and thorough understanding of military and defense matters. The National Homeland Security Academy would ensure that new and mid-level executive employees at the Department of Homeland Security—as well as other Federal, State, and local leaders with homeland security responsibilities—have a thorough understanding of the strategic missions of the Department, as well access to hands-on training exercises, and real-time simulation.

Four months ago, Hurricane Katrina reminded us in no uncertain terms that our homeland security workers at all levels still have much to learn. How and when to share critical information? What does it mean to activate the National Response Plan? Who is responsible for which emergency response mission? These are the types of questions we on the Homeland Security and Governmental Affairs Committee have been hearing as we investigate why the preparedness for and response to the hurricane was so lacking. The National Homeland Security Academy would provide answers to these and many more questions and ensure homeland security officials are better equipped to respond to the next disaster.

The centerpiece of the Academy would be the National Homeland Security Education and Strategy Center, where Federal homeland security officials would receive initial and continuing homeland security education. The Academy would also incorporate the Center for Homeland Defense and Security run by the Naval Postgraduate School at the Direction of the Office of State and Local Government Coordination and Preparedness. In addition, the bill establishes a National Homeland Security Education Network comprised of the academies and training centers within the jurisdiction of DHS—like the Federal Law Enforcement Training Center—as well as a communications network capable of providing distance learning opportunities.

It also creates a new State and Local Education and Training Coordinator within the Office of State and Local Government Coordination and Preparedness to address one of the most frequent criticisms local first responders have with the Department of Homeland Security, and that is the fact that many people in the Department seem to be unaware of or unwilling to make use of excellent state and local education and training programs. A liaison officer would rectify that.

This bill does not change the system for first responder training. Local first responders will continue to work with the Office of State and Local Government Coordination and Preparedness to ensure they have the necessary training to deal with the situations they face everyday. But we believe that bringing people together from all levels of government to study homeland security issues from different perspectives would be healthy. And we do think that homeland security will benefit overall from the relationships that would inevitably form between officials at every level and from every corner of the country.

The National Homeland Security Act of 2005 addresses a deficiency in the education and training of our homeland security professionals by helping to foster connected, experienced, and knowledgeable homeland security leaders who will be able to provide the best possible protection for the American people. I look forward to working with Chairman COLLINS in the next session to mark up this bill and make it law.

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. 2158

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''National Homeland Security Academy Act of 2005''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) homeland security poses a complex challenge for the Nation that can only be successfully addressed by the combined effort of Federal, State, and local governments and the private sector;

(2) the United States fields a dedicated workforce to provide homeland security, but lacks a coordinated homeland security education system that links a strategy-based education with hands on training and real time simulation, and fails to make such a system available to the appropriate government and private sector personnel on a wide scale;

(3) officials at all levels of government should understand the strategic mission of the Department of Homeland Security, and have access to continuing education and hands-on training exercises;

(4) the development of a program of professional education and training that links strategy and training, and coordinates current training among the many academies and training facilities that fall under the jurisdiction of the Department of Homeland Security, is essential to meeting the goals and intent of the Homeland Security Act of 2002;

(5) lessons learned from the Department of Homeland Security's Top Official Exercises (TOPOFF), and the tragedy of Hurricane Katrina, demonstrate there is a need to build up institutional knowledge within the Department and cultivate leaders capable of guiding the Department and the Nation when catastrophic incidents occur;

(6) modern information technologies provide uniquely powerful tools for ensuring that material is presented in a way that facilitates rapid and effective learning for a diverse student body, material being taught is continuously upgraded and reviewed, and training is available anytime and anywhere it is needed; and

(7) as the Homeland Security Act of 2002 brought together a number of Federal agencies with specific and often nonrelated functions to form a single department, the National Homeland Security Academy will draw upon the expertise of a variety of existing academic institutions and innovative programs to educate our homeland security workforce.

**SEC. 3. ESTABLISHMENT OF NATIONAL HOMELAND SECURITY ACADEMY.**

(a) IN GENERAL.—Title VIII of the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) is amended by adding after section 801 the following:

**"SEC. 802. NATIONAL HOMELAND SECURITY ACADEMY.**

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—The Secretary—

"(A) shall establish the National Homeland Security Academy (referred to in this section as the 'Academy') within the Office of State and Local Government Coordination and Preparedness of the Department; and

"(B) may enter into cooperative agreements with other agencies or entities to utilize space and provide for the lease of real property for the Academy or any component of the Academy.

"(2) COMPOSITION.—The Academy shall consist of—

"(A) the National Homeland Security Education and Strategy Center (referred to in this section as the 'Strategy Center') to provide fundamental instruction and develop a homeland security curriculum focusing primarily on the Federal Government's overall strategy, goals, methods, and techniques;

"(B) a communications network capable of delivering distance learning opportunities, at the direction of the Strategy Center;

"(C) the programs of the Office of State and Local Government Coordination and Preparedness' Center for Homeland Defense and Security located at the Naval Postgraduate School, and such programs shall be incorporated into the Academy in a manner to be determined by the Secretary; and

"(D) the National Homeland Security Education Network, which—

"(i) shall be composed of representatives from all of the academies and training centers within the jurisdiction of the Department;

"(ii) shall work with the Academy to develop a standardized homeland security curriculum to be incorporated, as appropriate, at each academy and training center to ensure that the focus of the individual centers is coordinated with the centralized educational strategies and goals of the Academy; and

"(iii) shall not affect the respective missions and goals of the participating academies and training centers.

"(3) MISSION.—The mission of the Academy shall be to—

"(A) establish an educational system to—

"(i) cultivate leaders in homeland security; and

"(ii) ensure that Federal, State, local, tribal, and private sector officials get the full range of skills needed to provide robust homeland security;

"(B) provide strategic education and training to carry out the missions of the Department of Homeland Security;

"(C) provide cross-disciplinary and joint education and training to Federal, State, and local government officials responsible for the direct application and execution of vital homeland security missions; and

"(D) focus primarily on shorter-term classes and exercises to maximize participation by the homeland security community.

"(4) ENROLLMENT TARGET.—

"(A) IN GENERAL.—The Strategy Center shall have an initial annual enrollment target of 1,000 resident students, as described in subsection (b)(3)(A).

"(B) NON-RESIDENT STUDENTS.—The enrollment target under subparagraph (A) does not include non-resident students, including students who participate in electronic learning systems.

"(5) RESPONSIBILITIES.—

"(A) IN GENERAL.—In addition to providing traditional course work and hands-on training exercises, the Academy shall encourage the development and use of modern technology to ensure that the training offered at the Academy, and to organizations and individuals receiving instruction over electronic learning systems—

"(i) is tailored to the unique needs of the individuals and groups that need training;

"(ii) efficiently uses such technology; and

"(iii) translates directly into practical skills.

"(B) INSTRUCTIONAL MATERIALS.—The Academy shall develop instructional requirements for courses related to its mission that are supported with materials that are adequately reviewed and continuously updated.

"(C) CERTIFICATION.—

"(i) IN GENERAL.—The Academy may establish certification criteria for students in areas related to its mission, in consultation with the Network established under subsection (e).

"(ii) RECERTIFICATION.—The criteria established under clause (i) shall include requirements for recertification and ensure the availability of needed assessment tools.

"(D) INFORMATION REPOSITORY.—The Academy shall provide a repository of approved instructional materials, instructional software, and other materials that are easily accessible by participants.

"(E) COMMUNICATION NETWORKS.—The Academy shall certify, and operate, if necessary, a secure, reliable communication system capable of delivering instructional materials to participants at any time and place.

"(F) INSTRUCTION AND EXPERTISE.—The Academy shall certify instructors, experts, counselors, and other individuals who can provide answers and advice to students over communication systems.

"(6) STRATEGY CENTER.—

"(A) RESPONSIBILITIES.—The Strategy Center shall—

"(i) provide curriculum development and classroom instruction for resident students that focus on the strategic goals, methods, and techniques for homeland security;

"(ii) provide instruction—

"(I) primarily to Federal employees described under subsection (b)(3)(A) with homeland security responsibilities; and

"(II) to small numbers of State and local government officials and private individuals; and

"(iii) direct the operation of the Academy's electronic learning systems.

"(B) CURRICULUM.—The curriculum taught at the Strategy Center shall—

"(i) include basic education about homeland security, the Department, and the relationship of the directorates within the Department;

"(ii) include the relationship between the Department and other Federal, State, and local agencies with homeland security responsibilities; and

"(iii) be developed with assistance from the National Homeland Security Education Network.

"(b) ADMINISTRATION.—

"(1) EXECUTIVE DIRECTOR.—The Secretary shall appoint an Executive Director for the Academy, who shall—

"(A) administer the operations of the Academy;

"(B) establish an Academic Board, to be headed by the Dean of the Academic Board, appointed under paragraph (2);

"(C) hire initial staff and faculty, as appropriate and necessary;

"(D) contract with practitioners and experts, as appropriate, to supplement academic instruction;

"(E) make recommendations to the Secretary regarding long-term staffing and funding levels for the Academy; and

"(F) report to the Executive Director of the Office of State and Local Government Coordination and Preparedness.

"(2) DEAN OF THE ACADEMIC BOARD.—The Executive Director shall appoint, with the approval of the Secretary, a permanent professor to serve as Dean of the Academic Board and perform such duties as the Executive Director may prescribe.

"(3) DIRECTOR OF ADMISSIONS.—The Executive Director shall appoint, with the approval of the Secretary, a Director of Admissions, who shall—

"(A) grant admission to the Strategy Center to—

"(i) new employees of the Department, who have clear homeland security responsibilities;

"(ii) mid-level executive employees of the Department, including employees that receive academy or other training, who demonstrate a need for cross-disciplinary or advanced education and training and have been endorsed by the appropriate Under Secretary;

"(iii) other Federal employees with homeland security responsibilities who have been endorsed by the head of their agency;

"(iv) State and local employees who—

"(I) demonstrate a clear responsibility for providing homeland security; and

''(II) possess the nomination of the Governor of their State, or Head of applicable jurisdiction; and

''(v) private sector applicants who demonstrate a clear responsibility for providing homeland security;

''(B) ensure that students from each level of government and the private sector are included in all programs and classes, whenever appropriate; and

''(C) perform such duties as the Executive Director may prescribe.

''(c) BOARD OF VISITORS.—

''(1) ESTABLISHMENT.—Before the Academy admits any students, the Secretary shall establish a Board of Visitors (in this section referred to as the 'Board') to—

''(A) assist in the development of curriculum and programs at the Academy; and

''(B) recommend the site for the location of the Strategy Center.

''(2) MEMBERSHIP.—

''(A) COMPOSITION.—The Board will be composed of—

''(i) the Secretary, or designee, who shall serve as chair;

''(ii) the Executive Director of the Academy, or designee, who shall be a nonvoting member;

''(iii) the Chairman of the Committee on Homeland Security and Governmental Affairs of the Senate, or designee;

''(iv) the Ranking Member of the Committee on Homeland Security and Governmental Affairs of the Senate, or designee;

''(v) the Chairman of the Committee on Homeland Security of the House of Representatives, or designee;

''(vi) the Ranking Member of the Committee on Homeland Security of the House of Representatives, or designee;

''(vii) the Secretary of Health and Human Services, or designee;

''(viii) the Secretary of Defense, or designee;

''(ix) the Secretary of Education, or designee;

''(x) the Secretary of Transportation, or designee;

''(xi) the Director of the Federal Bureau of Investigation, or designee;

''(xii) 4 persons, who shall be appointed by the Secretary for 2-year terms to represent State and local governments; and

''(xiii) 4 persons, who shall be appointed by the Secretary for 2-year terms to represent first responders.

''(B) PROHIBITION.—Any person described under subparagraph (A), whose membership on the Board would create a conflict of interest, shall not serve as a member of the Board.

''(C) VACANCIES.—If a member of the Board dies or resigns from office, the official who designated the member shall designate a successor for the unexpired portion of the term.

''(3) DUTIES.—

''(A) ACADEMY VISITS.—The Board shall visit the Academy not less than annually, and may, with the approval of the Secretary, make other visits to the Academy in connection with the duties of the Board or to consult with the Executive Director of the Academy.

''(B) INQUIRIES.—The Board shall inquire into the curriculum, instruction, physical equipment, fiscal affairs, academic methods, student body composition, and other matters relating to the Academy that the Board decides to consider.

''(C) REPORTS.—

''(i) ANNUAL REPORT.—Not later than 60 days after each annual visit, the Board shall submit a written report to the Secretary, which describes its action, and of its views and recommendations pertaining to the Academy.

''(ii) ADDITIONAL REPORTS.—Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the Secretary not later than 60 days after the approval.

''(4) TRAVEL EXPENSES.—The members of the Board 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 Board.

''(d) REPORTS TO CONGRESS.—

''(1) CURRICULUM AND ATTENDANCE.—The Secretary shall submit an annual report that describes the curriculum of, and enrollment at, the Academy to—

''(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

''(B) the Committee on Homeland Security of the House of Representatives.

''(2) FEASIBILITY REPORT.—Not later than 1 year after the establishment of the Academy, the Secretary shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives that—

''(A) recommends an appropriate combination of students from Federal, State, and local government and the private sector, and the percentage of costs related to the education of each of these student groups that should be reimbursable;

''(B) describes the feasibility of expanding the Academy in regional offices established by the Department or other government or university programs to provide ongoing education and training for Federal employees with homeland security responsibilities; and

''(C) describes the feasibility of providing education for the general public through electronic learning systems.

''(e) NATIONAL HOMELAND SECURITY EDUCATION NETWORK.—

''(1) ESTABLISHMENT.—The Executive Director of the Academy shall establish a National Homeland Security Education Network (referred to in this section as the 'Network'), as described under subsection (a)(2)(B).

''(2) MEMBERSHIP.—The Network shall be comprised of representatives from Federal training and certification organizations, including—

''(A) the National Homeland Security Academy;

''(B) the Office of Domestic Preparedness;

''(C) the National Domestic Preparedness Consortium;

''(D) the Center for Homeland Defense and Security at the Naval Postgraduate School;

''(E) the Federal Law Enforcement Training Center, including all schools or training and education programs managed or co-located with the Center;

''(F) the Customs and Border Protection Academy;

''(G) the Border Patrol Academy;

''(H) the Bureau of Immigration and Customs Enforcement Academy;

''(I) the Secret Service Academy;

''(J) the United States Coast Guard Academy, including all schools within the jurisdiction of the Coast Guard Academy;

''(K) the Emergency Management Institute;

''(L) the Animal and Plant Health Inspection Service Training Program;

''(M) the Federal Air Marshal Training Center;

''(N) the National Fire Academy; and

''(O) other relevant training facilities within the Department.

''(3) CURRICULUM REQUIREMENTS.—The curriculum and course work developed as part of the Network shall be incorporated into the curriculum of the institutions listed under paragraph (2), as appropriate, to ensure that students at these institutions understand how their homeland security responsibilities relate to other homeland security responsibilities in the Department and other Federal, State, and local agencies. The training centers and academies listed under paragraph (2) shall retain their respective missions and goals.

''(4) SEMI-ANNUAL MEETINGS.—The Executive Director and the Dean of the Academic Board shall meet with the Network not less than once every 6 months to—

''(A) discuss curriculum requirements; and

''(B) coordinate training activities within the Network.

''(5) REPORTS.—Not later than 2 years after the date of enactment of this section, and every 2 years thereafter, the Network shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives, which describes the Network's—

''(A) strategy for using advanced instructional technologies;

''(B) plans for future improvement; and

''(C) success in working with other organizations in achieving the goals described under subparagraphs (A) and (B).''.

(b) TECHNICAL AMENDMENT.—Section 1(b) of the Homeland Security Act of 2002 (Public Law 107–296) is amended by inserting after the item relating to section 801 the following:

''Sec. 802. National Homeland Security Academy.''.

**SEC. 4. STATE AND LOCAL EDUCATION AND TRAINING COORDINATOR.**

The Secretary of Homeland Security shall appoint a State and Local Education and Training Coordinator to serve in the Office of State and Local Government Coordination and Preparedness, who shall—

(1) serve as the primary point of contact between Federal, State, and local training facilities, the National Homeland Security Academy, and the Office of State and Local Government Coordination and Preparedness, in order to—

(A) maximize the ability of the Academy to identify non-Academy programs that meet specific training goals and are crucial to the Nation's homeland security mission; and

(B) assist the Academy and the Office of State and Local Government Coordination and Preparedness in determining where to direct Federal training funds; and

(2) at least semiannually, conduct meetings with a coalition of State and local education and training facilities to—

(A) allow State and local fire, rescue, and law enforcement training facilities to provide input on decisions made concerning the training of first responders; and

(B) increase curriculum coordination between the Academy and Federal, State, and local facilities.

**SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out the amendment made by section 3 such sums as may be necessary for each of the fiscal years 2006 through 2009.

Mrs. BOXER. Mr. President, each year Congress appropriates millions of dollars to institutions of higher learning that serve minority students. Currently, funds go to historically Black colleges and universities, Hispanic-serving institutions, tribally controlled colleges and universities, and Alaska Native and Native Hawaiian–serving institutions. These funds—which exceeded $890 million in fiscal year 2005—

help institutions provide more higher education opportunities for low-income minority students.

For schools that serve a large number of low-income Asian Americans and Pacific Islanders, however, Federal assistance is not available. A need is not being served.

Over 42 percent of Cambodian Americans, almost 35 percent of Laotian Americans and 25 percent of Vietnamese Americans live in poverty. And the graduation rates among these populations are low. Only 13.8 percent of Vietnamese Americans, 5.8 percent of Laotian Americans, 6.1 percent of Cambodian Americans, and 5.1 percent of Hmong have college degrees.

So, today, I am introducing the Asian Americans and Pacific Islanders Higher Education Enhancement Act. I am pleased to be joined in this effort by Senator AKAKA.

This legislation creates a new Federal grant program for institutions where Asian and Pacific Islander students make up at least 10 percent of the undergraduate student body. Priority will be given based on the number of low-income students.

The grants—authorized at $30 million in the first year, and such sums as necessary for the next 4 years—could be used for a variety of purposes, including outreach to secondary and elementary school students, curriculum development, tutoring, counseling, and student support services.

Mr. President, we need to make college accessible for low-income Asian American students as we do for with other minority students. This bill is an important step toward this goal.

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By Mrs. BOXER (for herself and Mr. AKAKA):

S. 2160. A bill to amend the Higher Education Act of 1965 to authorize grants for institutions of higher education serving Asian Americans and Pacific Islanders; to the Committee on Health, Education, Labor, and Pensions.

Mr. AKAKA. Mr. President, as a member of the Congressional Asian Pacific American Caucus, the only Chinese American in the U.S. Senate, and sole native Hawaiian in the U.S. Congress, I thank my colleague from California, Senator BOXER, for introducing a bill to establish Asian American and Pacific Islander, AAPI, Serving Institutions which will improve the educational opportunities available to Asian Americans and Pacific Islanders throughout our Nation. I am proud to stand with her as a cosponsor of her bill. I also commend my colleagues, Congressmen DAVID WU and MIKE HONDA, in the other body for working to advance an AAPI Serving Institution bill.

This legislation would authorize the Department of Education to establish an Asian American and Pacific Islander Serving Institution designation under the Higher Education Act. A higher education institution with an AAPI undergraduate enrollment of at least 10 percent would be eligible for grants to address and improve the institution's capacity to serve the AAPI community. In the Higher Education Act, titles III and V were established to provide aid for colleges and universities to expand educational opportunities for historically under represented and financially disadvantaged students. However, we need a program specifically for Asian American and Pacific Islander Americans. This legislation would assist in providing AAPI students with the equal opportunity to pursue a quality education.

The AAPI community has made many significant contributions to our country, and is known as having the highest percentage of undergraduate and advanced degrees when compared to other racial or ethnic groups according to the College Board. However, as one of the most ethnically, culturally, and linguistically diverse groups in America, the success of the community as a whole masks the needs of its disparate groups who may not be doing so well. This is the ''model minority'' myth. In fact, serious challenges face Cambodian, Hmong, and Pacific Islander students, particularly in the acquisition of the English language.

The AAPI population is one of the fastest growing populations in this country, including nearly 12 million Asian Americans and 1 million Pacific Islanders. Census projections show the AAPI population more than doubling by 2050 and comprising about 9 percent of the total U.S. population. As a significant part of our society, AAPIs and their higher education needs should be better understood and addressed, and the establishment of AAPI Serving Institutions would be a major step in the right direction for this multifaceted population.

I urge my colleagues to join me in supporting Senator BOXER's legislation to enhance educational opportunities for Asian Americans and Pacific Islanders.

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By Mr. INHOFE (for himself, Mr. DOMENICI, Mr. HAGEL, and Mr. NELSON of Nebraska):

S. 2161. A bill to amend the Safe Drinking Water Act to prevent the enforcement of certain national primary drinking water regulations unless sufficient funding is available or variance technology has been identified; to the Committee on Environment and Public Works.

Mr. INHOFE. Mr. President, I rise today to introduce The Small System Drinking Water Act of 2005 to assist water systems throughout the country comply with the numerous Federal drinking water standards. My bill will require the Federal Government to live up to its obligations and require the EPA to use all of the tools given the Agency in the 1996 Safe Drinking Water Act amendments (SDWA).

In Oklahoma we continue to have municipalities struggling with the arsenic rule. Further nearly 80 percent of our small systems, those serving less than 10,000 people, are not in compliance with the Disinfection Byproducts (DBP) Stage I rule. In EPA's most recent drinking water needs survey, Oklahoma identified $4.5 billion in infrastructure needs over the next 20 years. $40 million a year of that need is to meet Federal drinking water standards. This does not include costs imposed by Oklahoma communities to meet Federal clean water requirements.

The EPA on December 15th finalized the Disinfection Byproducts Stage II rule and the Long Term 2 Enhanced Surface Water Treatment Rule. The costs of complying with these two rules are not included in the $40 million a year need recently identified by the State. At current funding rates, the State receives $8.5 million dollars for its drinking water revolving loan fund.

My bill proposes a few simple steps to help systems comply with the rules. First, it reauthorizes the technical assistance program in the SDWA. The DBP Stage I rule is very complex and involves a lot of monitoring and testing. The other rules are equally complex in nature and many small systems simply do not have the expertise needed to implement them. If we are going to impose complicated requirements on systems, we need to provide them with help to implement those requirements. Therefore, my legislation also requires that each system receive the help it needs to come into compliance before an enforcement action can be taken.

The bill also creates a pilot program to demonstrate new technologies and approaches for systems of all sizes to comply with these complicated rules. It requires the EPA to convene a working group to examine the science behind the rules compared to new developments since their publication.

Section 1412(b)(4)(E) of the SDWA Amendments of 1996 authorizes the use of point of entry treatment, point of use treatment and package plants to economically meet the requirements of the Act. However, to date, these approaches are not widely used by small water systems. My legislation directs the EPA to convene a working group to identify barriers to the use of these approaches. The EPA will then use the recommendations of the working group to draft a model guidance document that states can use to create their own programs.

This legislation seeks to provide communities with more tools in order to comply with these Federal requirements while also requiring EPA to use the tools it has been provided, including the identification of variance technologies.

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By Ms. SNOWE:

S. 2162. A bill to foster local development by facilitating the delivery of financial assistance to small businesses, and for other purposes; to the Committee on Small Business and Entrepreneurship.

Ms. SNOWE. Mr. President, I rise today to introduce the ''Local Development Business Loan Program Act of 2005.'' This bill will improve the Small Business Administration's (SBA) Certified Development Company Loan Program, also known as the ''504 Loan Program,'' by streamlining the lending process and providing small businesses with greater opportunities to obtain affordable financing. The 504 Loan Program provides small businesses with long-term, fixed-rate financing for real estate and machinery.

As Chair of the Senate Committee on Small Business and Entrepreneurship, one of my primary responsibilities is to ensure small businesses are afforded the best possible environment to grow and flourish. The fundamental purpose of the SBA is to maintain and strengthen the nation's economy by aiding, counseling, assisting, and protecting the interests of small business concerns. This bill would strengthen the SBA's ability to pursue those goals.

The legislation responds to one of the primary needs of small businesses: access to affordable capital. For many small businesses, expansion plans face constraints imposed by facilities that are too small, or equipment that has insufficient capacity or outdated features. These small businesses often lack capital to remedy these needs, and without the SBA they would be limited to obtaining short-term financing with higher, often variable, rates. As a result, the 504 loan program is a key element of these small businesses' eventual success, because the program provides long-term capital, at fixed rates, that allows businesses to obtain new facilities, expand existing facilities, and update their machinery.

In Fiscal Year 2004, the SBA's financing programs, combined, supported over $20 billion in loans and venture capital for small businesses. In the 504 program alone, small businesses obtained 8,357 loans in 2004. Through those loans the SBA guaranteed over $4 billion in financing. The SBA portion of each 504 program loan is only 40 percent of the total loan size. This program thus produced approximately $10 billion in financing for small businesses in 2004! That financing allowed small businesses to create or retain 140,000 jobs in 2004.

Although the 504 program is already assisting entrepreneurial small businesses throughout the nation, it can be improved. The program works by combining in each financing package provided to a small business a loan from a Certified Development Company (CDC) that is guaranteed by the SBA, this is 40 percent of the total package; a nonguaranteed loan provided by a private ''first-mortgage'' lender, 50 percent of the total package; and a 10 percent down-payment provided by the small business. This bill offers improvements to all three aspects of the program, to increase the program's efficiency and impact. If approved by the Congress and signed into law, this bill will increase the number of small businesses that can utilize the program to grow and succeed.

Job creation and retention is a bedrock element of local development efforts throughout the country. One of the statutory purposes of the 504 loan program is to create new jobs and to help small businesses retain existing jobs. This bill's purpose is to further strengthen the local development impact of the 504 loan program. To reflect that, the bill re-names the 504 loan program as the ''Local Development Business Loan Program'' (Local Development Program). This new name will also help borrowers to understand the intent of the program; many small business owners had commented to the Committee that the name ''504 program'' was neither clear nor indicative of the program's purposes. The bill will not require the SBA to waste money by discarding existing program materials that refer to the previous name; the SBA may continue to use those materials, but it will use the new name on any new materials produced after the bill's enactment.

If the Local Development Program continues to grow at its recent pace, it may exceed $6 billion in guaranteed loans during 2006. The bill would authorize a maximum program level of $8 billion in guaranteed loans in fiscal year 2007, and $8.5 billion for fiscal year 2008.

This legislation will also reduce regulatory barriers that have constrained CDCs from expanding their operations into new areas. By increasing competitive opportunities for CDCs, the bill seeks to increase the number and qualify of financing options available to small businesses. For instance, existing SBA regulations require CDCs to have a separate loan committee for each State and to account for all revenue and expenses separately for each state. Regulations of this type have made compliance both costly and difficult and have deterred many CDCs from expanding into new areas. Simplifying these regulations will result in increased access to capital for small business.

The bill allows borrowers to provide more than the required minimum amount of equity when initiating their loan, and to use the excess equity to reduce the amount of the first-lien mortgage made by a private lender in the program. By contributing a larger down-payment at the onset of the loan, this provision will provide an opportunity for these borrowers to reduce their periodic payment obligations.

This legislation would also designate Local Development Program loans that qualify under the New Markets Tax Credit Program as a public policy goal under the Local Development Program, and thus make them eligible for larger financing packages. The New Market Tax Credit Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities.

The Act will also permit the ownership interest of two or more small business owners to be combined to determine whether the small business is 51 percent owned by minorities, women, or veterans in order to qualify as a business eligible for a public policy loan. The Act's goal of improving access to capital for small businesses is also furthered by another provision that permits Local Development Program borrowers to obtain financing in the maximum amount permitted under this program and also under the SBA's ''7(a) loan program.''

This legislation would also allow a borrower to refinance a limited amount of existing debt. The amount that could be refinanced could not exceed 50 percent of the expansion project funded by the loan, and would be limited to certain situations. By giving these small businesses the opportunity to refinance and obtain lower-cost capital, the bill would provide them a greater chance to succeed.

The bill would also eliminate a fee now imposed on the first mortgage lenders, private banks, in a Local Development Program financing package. The lender's fee is a one-time fee equal to 0.5 percent of the first mortgage loan. Currently, the first mortgage lenders pass this fee on to CDCs and to borrowers. The bill will not increase the total fees paid by the CDCs or the borrowers, but clarifies that the CDC's stipulated annual fee would be increased by 0.06 percent, 6/100ths of one percent, and the borrower's stipulated fee would increase by approximately 0.06 percent, to replace the fees currently imposed on CDCs and borrowers by private lenders. In other words, instead of a fee imposed on CDCs and borrowers by the private lenders, which is not always clearly identifiable to those outside the program, this provision will specify the fee be paid directly by the CDCs and borrowers. It is hoped that this provision will clarify the fee obligations owed within the program, and will clearly identify to banks the total costs of participating in the program.

The SBA's current 504 Program provides our Nation's small businesses with low-cost, long-term financing that is absolutely critical to starting and developing a successful business. In turn, small businesses create the majority of new jobs created in the United States. This program, re-named as the Local Development Business Loan Program, will continue to help small businesses create jobs and support their local communities. In fact, the provisions in this bill will improve those efforts significantly.

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. 2162

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

**SECTION 1. SHORT TITLE; DEFINITION.**

(a) SHORT TITLE.—This Act may be cited as the ''Local Development Business Loan Program Act of 2005''.

(b) DEFINITION.—In this Act, the term ''Administrator'' means the Administrator of the Small Business Administration.

**SEC. 2. DEVELOPMENT COMPANY LOAN PROGRAMS.**

(a) TITLE OF PROGRAM.—Title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) is amended by adding at the end the following:

**''SEC. 511. PROGRAM TITLE.**

''The programs authorized by this title shall be known as the 'Local Development Business Loan Program'.''.

(b) EXISTING MATERIALS.—The Administrator may use informational materials created, or that were in the process of being created, before the date of enactment of this Act that do not refer to a program under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) as the ''Local Development Business Loan Program''.

(c) NEW MATERIALS.—Any informational materials created by the Administrator on or after the date of enactment of this Act shall refer to any program under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) as the ''Local Development Business Loan Program''.

**SEC. 3. PROGRAM AUTHORIZATIONS.**

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding at the end the following:

''(f) FISCAL YEAR 2007.—For the program authorized under section 7(a)(13) of this Act and the Local Development Business Loan Program under the Small Business Investment Act of 1958, the Administrator is authorized to make $8,000,000,000 in financings, and there are authorized to be appropriated to the Administrator such sums as may be necessary to carry out such programs.

''(g) FISCAL YEAR 2008.—For the program authorized under section 7(a)(13) of this Act and the Local Development Business Loan Program under the Small Business Investment Act of 1958, the Administrator is authorized to make $8,500,000,000 in financings, and there are authorized to be appropriated to the Administrator such sums as may be necessary to carry out such programs.''.

**SEC. 4. LOAN LIQUIDATIONS.**

Section 510 of the Small Business Investment Act of 1958 (15 U.S.C. 697g) is amended—

(1) by redesignating subsection (e) as subsection (g); and

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

''(e) PARTICIPATION.—

''(1) IN GENERAL.—Any qualified State or local development company which elects not to apply for authority to foreclose and liquidate defaulted loans under this section, or which the Administrator determines to be ineligible for such authority, shall contract with a qualified third-party to perform foreclosure and liquidation of defaulted loans in its portfolio. The contract shall be contingent upon approval by the Administrator with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

''(2) COMMENCEMENT.—The provisions of this subsection shall not require any development company to liquidate defaulted loans until the Administrator has adopted and implemented a program to compensate and reimburse development companies, as provided under subsection (f).

''(f) COMPENSATION AND REIMBURSEMENT.—

''(1) REIMBURSEMENT OF EXPENSES.—The Administrator shall reimburse each qualified State or local development company for all expenses paid by such company as part of the foreclosure and liquidation activities, if the expenses—

''(A) were approved in advance by the Administrator, either specifically or generally; or

''(B) were incurred by the development company on an emergency basis without prior approval from the Administrator, if the Administrator determines that the expenses were reasonable and appropriate.

''(2) COMPENSATION FOR RESULTS.—The Administrator shall develop a schedule to compensate and provide an incentive to qualified State or local development companies that foreclose and liquidate defaulted loans. The schedule shall be based on a percentage of the net amount recovered, but shall not exceed a maximum amount. The schedule shall not apply to any foreclosure which is conducted pursuant to a contract between a development company and a qualified third party to perform the foreclosure and liquidation.''.

**SEC. 5. ADDITIONAL EQUITY INJECTIONS.**

Section 502(3)(B)(ii) of the Small Business Investment Act of 1958 (15 U.S.C. 696(3)(B)(ii)) is amended to read as follows:

''(ii) FUNDING FROM INSTITUTIONS.—If a small business concern—

''(I) provides the minimum contribution required under subparagraph (C), not less than 50 percent of the total cost of any project financed under clause (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i); and

''(II) provides more than the minimum contribution required under subparagraph (C), any excess contribution may be used to reduce the amount required from the institutions described in subclauses (I), (II), and (III) of clause (i), except that the amount from such institutions may not be reduced to an amount that is less than the amount of the loan made by the Administrator.''.

**SEC. 6. BUSINESSES IN LOW-INCOME AREAS.**

Section 501(d)(3)(A) of the Small Business Investment Act of 1958 (15 U.S.C. 695(d)(3)(A)) is amended by inserting after ''business district revitalization,'' the following: ''or expansion of businesses in low-income communities which would be eligible for a new markets tax credit pursuant to section 45D(a) of the Internal Revenue Code of 1986, or implementing regulations issued thereunder,''.

**SEC. 7. COMBINATIONS OF CERTAIN GOALS.**

Section 501(e) of the Small Business Investment Act of 1958 (15 U.S.C. 695(e)) is amended by adding at the end the following:

''(7) A small business concern that is unconditionally owned by more than 1 individual, or a corporation, the stock of which is owned by more than 1 individual, shall be deemed to have achieved a public policy goal required under subsection (d)(3) if a combined ownership share of not less than 51 percent is held by individuals who are in 1 of the groups described in subparagraph (C) or (E) of subsection (d)(3).''.

**SEC. 8. MAXIMUM 504 AND 7(A) LOAN ELIGIBILITY.**

Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended by adding at the end the following:

''(C) COMBINATION FINANCING.—Notwithstanding any other provision of law, financing under this title may be provided to a borrower in the maximum amount provided in this subsection, and a loan guarantee under section 7(a) of the Small Business Act may be provided to the same borrower in the maximum amount provided in section 7(a)(3)(A) of such Act, to the extent that the borrower otherwise qualifies for such assistance.''.

**SEC. 9. REFINANCING.**

Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended by adding at the end the following:

''(7) PERMISSIBLE DEBT REFINANCING.—

''(A) IN GENERAL.—Any financing approved under this title may include a limited amount of debt refinancing.

''(B) EXPANSIONS.—If the project involves expansion of a small business concern which has existing indebtedness collateralized by fixed assets, any amount of existing indebtedness that does not exceed ½ of the project cost of the expansion may be refinanced and added to the expansion cost, providing that—

''(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

''(ii) the borrower has been current on all payments due on the existing debt for at least the preceding year; and

''(iii) the financing under section 504 will provide better terms or rate of interest than exists on the debt at the time of refinancing.''.

**SEC. 10. FEES.**

(a) IN GENERAL.—Section 503(d) of the Small Business Investment Act of 1958 (15 U.S.C. 697(d)) is amended—

(1) by striking paragraph (2);

(2) by redesignating paragraph (3) as paragraph (2); and

(3) in paragraph (2), as so redesignated, by striking ''0.125 percent'' and inserting ''0.185 percent''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect and apply to loans under section 503(d) of the Small Business Investment Act of 1958 (15 U.S.C. 697(d)) approved on or after 30 days after the date of enactment of this Act.

**SEC. 11. TECHNICAL CORRECTION.**

Section 501(e)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 695(e)(2)) is amended by striking ''outstanding''.

**SEC. 12. SBIA DEFINITIONS.**

Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended—

(1) by striking paragraph (6) and inserting the following:

''(6) the term 'development company' means an entity incorporated under State law with the authority to promote and assist the growth and development of small business concerns in the areas in which it is authorized to operate by the Administrator;'';

(2) in paragraph (16), by striking ''and'' at the end;

(3) in paragraph (17), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(18) the term 'certified development company' means a development company that the Administrator has certified meets the criteria of section 506.''.

**SEC. 13. REPEAL OF SUNSET ON RESERVE REQUIREMENTS FOR PREMIER CERTIFIED LENDERS.**

Section 508(c)(6)(B) of the Small Business Investment Act of 1958 (15 U.S.C. 697e(c)(6)(B)) is amended—

(1) in the heading, by striking ''TEMPORARY REDUCTION'' and inserting ''REDUCTION''; and

(2) by striking ''Notwithstanding subparagraph (A), during the 2-year period beginning on the date that is 90 days after the date of enactment of this subparagraph, the'' and inserting ''The''.

**SEC. 14. ELIGIBILITY OF DEVELOPMENT COMPANIES TO BE DESIGNATED AS CERTIFIED DEVELOPMENT COMPANIES AND AUTHORITY TO ISSUE DEBENTURES; AND PROVIDING AN AREA OF OPERATIONAL AUTHORITY, FUNDING RESTRICTIONS, AND ETHICAL REQUIREMENTS.**

Section 506 of the Small Business Investment Act of 1958 (15 U.S.C. 697c) is amended—

(1) in the heading, by striking ''**RESTRICTIONS ON DEVELOPMENT COMPANY ASSISTANCE**'' and inserting ''**CERTIFIED DEVELOPMENT COMPANIES**''; and

(2) by inserting before ''Notwithstanding any other provision of law'' the following:

''(a) AUTHORITY TO ISSUE DEBENTURES.—A development company may issue debentures under this title if the Administrator certifies that the company meets the following criteria:

''(1) SIZE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the development company shall be a small business concern with fewer than 500 employees, and shall not be under the control of any entity that does not meet the size standards established by the Administrator for a small business concern.

''(B) EXCEPTION.—Any development company that was certified by the Administrator before December 31, 2005, may continue to issue debentures under this title.

''(2) PURPOSE.—A primary purpose of the development company shall be to benefit the community by fostering economic development to create and preserve jobs and stimulate private investment.

''(3) PRIMARY FUNCTION.—A primary function of the development company shall be to accomplish its purpose by providing long term financing to small business concerns under the Local Development Business Loan Program. The development company may also provide or support other local economic development activities to assist the community.

''(4) NONPROFIT STATUS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the development company shall be a nonprofit corporation.

''(B) EXCEPTION.—A development company certified by the Administrator before January 1, 1987, may continue to issue debentures under this title and retain its status as a for-profit enterprise.

''(5) GOOD STANDING.—The development company—

''(A) shall be in good standing in the State in which such company is incorporated and in any other State in which it conducts business; and

''(B) shall be in compliance with all laws, including taxation requirements, in the State in which such company is incorporated and in any other State in which it conducts business.

''(6) MEMBERSHIP OF DEVELOPMENT COMPANY.—There shall be—

''(A) not fewer than 25 members of the development company (or owners or stockholders, if the corporation is a for-profit entity) none of whom may own or control more than 10 percent of the voting membership of the company; and

''(B) at least 1 member of the development company (none of whom is in a position to control the development company) from each of the following:

''(i) Government organizations that are responsible for economic development.

''(ii) Financial institutions that provide commercial long term fixed asset financing.

''(iii) Community organizations that are dedicated to economic development.

''(iv) Businesses.

''(7) BOARD OF DIRECTORS.—

''(A) IN GENERAL.—The development company shall have a board of directors.

''(B) MEMBERS OF BOARD.—Each member of the board of directors shall be—

''(i) a member of the development company; and

''(ii) elected by a majority of the members of the development company.

''(C) REPRESENTATION OF ORGANIZATIONS AND INSTITUTIONS.—

''(i) IN GENERAL.—There shall be at least 1 member of the board of directors from not fewer than 3 of the 4 organizations and institutions described in paragraph (6)(B), none of whom is in a position to control the development company.

''(ii) MAXIMUM PERCENTAGE.—Not more than 50 percent of the members of the board of directors shall be from any 1 of the organizations and institutions described in paragraph (6)(B).

''(D) MEETINGS.—The board of directors of the development company shall meet on a regular basis to make policy decisions for such company.

''(8) PROFESSIONAL MANAGEMENT AND STAFF.—

''(A) IN GENERAL.—The development company shall have full-time professional management, including a chief executive officer to manage daily operations and a full-time professional staff qualified to market the Local Development Business Loan Program and handle all aspects of loan approval and servicing, including liquidation, if appropriate.

''(B) INDEPENDENT MANAGEMENT AND OPERATION.—Except as provided in paragraph (9), the development company shall be independently managed and operated to pursue the economic development purpose of the company and shall employ directly the chief executive officer.

''(9) MANAGEMENT AND OPERATION EXCEPTIONS.—

''(A) AFFILIATION.—A development company may be an affiliate of another local nonprofit service corporation (other than a development company), a purpose of which is to support economic development in the area in which the development company operates.

''(B) STAFFING.—A development company may satisfy the requirement for full-time professional staff under paragraph (8)(A) by contracting for the required staffing with—

''(i) a local nonprofit service corporation;

''(ii) a nonprofit affiliate of a local nonprofit service corporation;

''(iii) an entity wholly or partially operated by a governmental agency; or

''(iv) another entity approved by the Administration.

''(C) DIRECTORS.—A development company and a local nonprofit service corporation with which it is affiliated may have in common some, but not all, members of their respective board of directors.

''(D) RURAL AREAS.—A development company in a rural area may satisfy the requirements of a full-time professional staff and professional management ability under paragraph (8)(A) by contracting for such services with another certified development company that—

''(i) has such staff and management ability; and

''(ii) is located in the same State as the development company or in a State that is contiguous to the State in which the development company is located.

''(E) PREVIOUSLY CERTIFIED.—A development company that, on or before December 31, 2005, was certified by the Administrator and had contracted with a for-profit company to provide staffing and management services, may continue to do so.

''(b) USE OF EXCESS FUNDS.—Any funds generated by a certified development company from making loans under section 503 or 504 that remain unexpended after payment of staff, operating, and overhead expenses shall be retained by the certified development company as a reserve for—

''(1) future operations;

''(2) expanding the area in which the certified development company operates through the methods authorized by this Act; or

''(3) investment in other local economic development activity in the State from which such funds were generated.

''(c) ETHICAL REQUIREMENTS.—

''(1) IN GENERAL.—A certified development company and the officers, employees, and other staff of the company shall at all times act ethically and avoid activities which constitute a conflict of interest or appear to constitute a conflict of interest.

''(2) PROHIBITED CONFLICT IN PROJECT LOANS.—

''(A) IN GENERAL.—No certified development company may—

''(i) recommend or approve a guarantee of a debenture by the Administrator under the Local Business Development Loan Program that is collateralized by a second lien position on the property being constructed or acquired; and

''(ii) provide, or be affiliated with a corporation or other entity which provides, financing collateralized by a first lien on the same property.

''(B) EXCEPTION.—During the 2-year period beginning on the date of enactment of this subsection, a certified development company that was participating as a first mortgage lender for the Local Business Development Loan Program in either of fiscal years 2004 or 2005 may continue to do so.

''(3) OTHER ECONOMIC DEVELOPMENT ACTIVITIES.—It shall not be a conflict of interest for a certified development company to operate multiple programs to assist small business concerns as part of carrying out its economic development purpose.

''(d) MULTISTATE OPERATIONS.—

''(1) AUTHORIZATION.—Notwithstanding any other provision of law, the Administrator shall permit a certified development company to make loans in any State that is contiguous to the State of incorporation of that certified development company, only if such company—

''(A) is—

''(i) an accredited lender under section 507; or

''(ii) a premier certified lender under section 508;

''(B) has a membership that contains not fewer than 25 members from each State in which the company makes loans;

''(C) has a board of directors that contains not fewer than 1 member from each State in which the company makes loans; and

''(D) maintains not fewer than 1 loan committee, which shall have not fewer than 1 member from each State in which the company makes loans; and

''(E) submits to the Administrator, in writing—

''(i) a notice of the intention of the company to make loans in multiple States;

''(ii) the names of the States in which the company intends to make loans;

''(iii) a detailed statement of how the company will comply with this paragraph, including a list of the members described in subparagraph (B).

''(2) REVIEW.—The Administrator shall verify whether a certified development company satisfies the requirements of paragraph (1) on an expedited basis and, not later than 30 days after the date on which the Administrator receives the statement described in paragraph (1)(E)(iii), the Administrator shall determine whether such company satisfies such criteria and provide notice to such company.

''(3) LOAN COMMITTEE PARTICIPATION.—For any loan made by a company described in paragraph (1), not fewer than 1 member of the loan committee from the State in which the loan is to be made shall participate in the review of such loan.

''(4) AGGREGATE ACCOUNTING.—A company described in paragraph (1) may maintain an aggregate accounting of all revenue and expenses of the company for purposes of this title.

''(5) DIRECTORS.—Notwithstanding any other provision of law, a person may serve on the board of directors, but not as an officer, of more than 1 certified development company if none of the certified development companies on which the person serves as a member of the board of directors are located or operate in the same area.

''(6) LOCAL JOB CREATION REQUIREMENTS.—Any certified development company making loans in multiple States shall satisfy any applicable job creation or retention requirements separately for each such State. Such a company shall not count jobs created or retained in 1 State towards any applicable job creation or retention requirement in another State.

''(7) CONTIGUOUS STATES.—For purposes of this subsection, the States of Alaska and Hawaii shall be deemed to be contiguous to any State abutting the Pacific ocean.

''(e) RESTRICTIONS ON DEVELOPMENT COMPANY ASSISTANCE.—''.

**SEC. 15. CONFORMING AMENDMENTS.**

Section 503 of the Small Business Investment Act of 1958 (15 U.S.C. 697) is amended—

(1) in subsection (a)(1), by striking ''qualified State or local development company'' and inserting ''certified development company''; and

(2) by striking subsection (e) and inserting the following:

''(e) SECTION 7(a) LOANS.—Notwithstanding any other provision of law, a certified development company is authorized to prepare applications for deferred participation loans under section 7(a) of the Small Business Act, to service such loans, and to charge a reasonable fee for servicing such loans.''.

**SEC. 16. CLOSING COSTS.**

Section 503(b) of the Small Business Investment Act of 1958 (15 U.S.C. 697(b)) is amended by striking paragraph (4) and inserting the following:

''(4) the aggregate amount of such debenture does not exceed the amount of the loans to be made from the proceeds of such debenture plus, at the election of the borrower, other amounts attributable to the administrative and closing costs of such loans, except for the attorney fees of the borrower;''.

**SEC. 17. DEFINITION OF RURAL.**

Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end the following:

''(f) As used in this title, the term 'rural' shall include any area that is not—

''(1) a city or town that has a population greater than 50,000 inhabitants; or

''(2) the urbanized area contiguous and adjacent to a city or town described in paragraph (1).''.

**SEC. 18. REGULATIONS AND EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided in subsection (b), the Administrator shall—

(1) publish proposed rules to implement this Act and the amendments made by this Act not later than 120 days after the date of enactment of this Act; and

(2) publish such rules in final form not later than 120 days after the date of publication under paragraph (1).

(b) MULTISTATE OPERATIONS.—As soon as is practicable after the date of enactment of this Act, the Administrator shall promulgate regulations to implement section 506(d) of the Small Business Investment Act of 1958, as added by section 14 of this Act. Such regulations shall become effective not later than 120 days after the date of enactment of this Act.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) and section 10(b), this Act and the amendments made by this Act shall become effective 240 days after the date of enactment of this Act, regardless of whether the Administrator has promulgated the regulations required under subsection (a).

(2) MULTISTATE OPERATIONS.—Section 506(d) of the Small Business Investment Act of 1958, as added by section 14 of this Act, shall become effective 120 days after the date of enactment of this Act, regardless of whether the Administrator has promulgated the regulations required under subsection (b).

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By Mr. KERRY:

S. 2163. A bill to amend titles 10 and 38 of the United States Code, to increase and index educational benefits for veterans under the Montgomery GI bill to ensure adequate and equitable benefits for active duty members and members of the selected Reserve, and to include certain servicemembers previously excluded from such benefits; to the Committee on Veterans' Affairs.

Mr. KERRY. Mr. President, the original GI Bill of 1944 was intended to help veterans readjust to civilian life, and to recognize the service they provided to their country. Subsequent GI Bills, including the one in force today, have been important tools to recruit the world's best troops.

The GI Bill is meant ''to help meet, in part, the expenses of such individual's subsistence, tuition, fees, supplies, books, equipment, and other educational costs.'' At certain points historically the payment has met over 100 percent of these costs.

Yet, today's troops, performing with such distinction in Iraq, Afghanistan, and other locations around the world, are returning home to a GI Bill that covers only 63 percent of the average price of a public four-year secondary education.

Veterans are struggling to make up the difference in the price of their education.

We have heard of a 28-year-old Navy veteran who served two deployments in the Persian Gulf between 1996 and 2002. When he went to school he had to supplement his GI Bill benefits by working part-time as a bartender and taking out tens of thousands of dollars in emergency loans.

We've heard of a veteran who served 4 years in the airborne infantry prior to enrolling in a local community college in California under the GI Bill. He has been able to make ends meet at the community college by subsidizing his GI Bill benefits through part time work, but he worries that he will be unable to fulfill his dream of finishing up at UC Davis because his benefits and part time job will not cover the higher costs at the 4-year public secondary institution.

But not all veterans are in a position where they can worry only about their education. Almost 60 percent of enlisted men and women are married today, compared with 40 percent in 1973. These veterans are faced with choosing to borrow in order to invest for the future or take care of their family now.

We know of veterans who have lost that fight. One was unable to come up with the remaining third of the cost of his education and support his wife and baby daughter. His wife had convinced him to use his GI Bill benefits, but for this young veteran, ''the benefit just didn't match up to the cost of living'' and he dropped out of school after only one semester.

Over the past 10 years, less than 10 percent of eligible veterans who signed up for the GI Bill from 1985 to 1994 used their entire educational benefit, although 70 percent have used some portion of it.

The legislation I introduce today is the start of an effort to help veterans meet the everincreasing costs of education. It is only a start. I recognize that the cost of this proposal has to be addressed for the legislation to advance. Toward this end, Senator ENSIGN and I have written to the Veterans' Affairs Committee seeking reauthorization of a reporting requirement that will inform this process. And I plan to work with my colleagues in the coming months to find a solution that meets the needs of America's veterans.

We know that improving GI Bill benefits isn't just about saying thank you. It is critical to recruiting the world's finest military. As recently as 2004, a survey of active duty service members found that GI Bill education benefits were the primary reason individuals chose to enlist. We recently increased sign-up and reenlistment bonuses for members of the military. The GI Bill must increase too.

This legislation, the Armed Forces Education Benefits Improvement Act, would increase GI Bill educational benefits to cover the average price of a 4-year secondary education. According to the most recent report by the U.S. Department of Education, an average public 4-year education cost $14,260 in 2004–05, compared with the $9,036 provided under the current GI Bill for the same time period.

The Armed Forces Education Benefits Improvement Act would also provide for real growth in future benefits that keep paces with the ever increasing cost of education. The bill would index the increased benefit to the ''college tuition and fees'' component of the Consumer Price Index. Currently, the increasing cost of education is out-pacing growth in GI Bill benefits, which are indexed to the less rapidly growing overall inflation.

This legislation would also increase the base amount provided for members of the Selected Reserve by approximately 59 percent. And it maintains the same ratio in the FY05 Defense Authorization Act for those members of the Selected Reserve called up to active duty for at least 90 days.

Finally, the Armed Forces Education Benefits Improvement Act would open' enrollment for updated Montgomery GI bill benefits to certain active duty service members who declined to accept the Veterans Education Assistance Program, VEAP, offered between January 1, 1977 and June 30, 1985. These veterans are the only group of active duty service members—other than service academy graduates and recipients of certain ROTC scholarships—who have not been able to sign up for GI Bill educational benefits.

I am pleased that this legislation has been endorsed by the Military Officers Association of America and the Reserve Enlisted Association.

I know my colleagues are as inspired as I am by the dedication, courage, and honor of the soldiers, sailors, airmen, and Marines we meet around the world. They serve with a selfless devotion to their country and their mission—and we are all so very proud of them. The least that we can do is ensure the GI Bill education benefits keep pace with the cost of education in this country. I look forward to working with my colleagues over the coming months to bring this legislation to fruition.

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. 2163

*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 ''Armed Forces Education Benefits Improvement Act''.

**SEC. 2. ADJUSTMENT AND ANNUAL DETERMINATION OF EDUCATIONAL ASSISTANCE UNDER THE MONTGOMERY GI BILL FOR ACTIVE DUTY MEMBERS.**

(a) IN GENERAL.—Section 3015 of title 38, United States Code, is amended—

(1) in subsection (a), by amending paragraph (1) to read as follows:

''(1) for an approved program of education pursued on a full-time basis—

''(A) $1,584 per month for months during fiscal year 2005; and

''(B) for months during fiscal year 2006 and each subsequent fiscal year, the monthly amount under this paragraph for the previous fiscal year multiplied by the percentage increase calculated under subsection (h); or'';

(2) in subsection (b), by amending paragraph (1) to read as follows:

''(1) for an approved program of education pursued on a full-time basis—

''(A) $1,267 per month for months during fiscal year 2005; and

''(B) for months during fiscal year 2006 and each subsequent fiscal year, the monthly amount under this paragraph for the previous fiscal year multiplied by the percentage increase calculated under subsection (h); or''; and

(3) in subsection (h)(1), by striking ''all items'' and inserting ''college tuition and fees''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first month beginning after the date of enactment of this Act.

**SEC. 3. ANALYSIS OF IMPACT OF MONTGOMERY GI BILL EDUCATIONAL BENEFITS.**

(a) FINDINGS.—Congress finds that—

(1) the enhanced educational benefits provided under the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 are an important step in ensuring that members of the Selected Reserve are thanked for their increasing role in the modern warfare; and

(2) when these members return from extended tours in Iraq, Afghanistan, and other places, they should be provided with immediate access to these enhanced educational benefits.

(b) COOPERATION.—The Secretary of Defense shall work expeditiously with the Secretary of Veterans Affairs to ensure that members of the Selected Reserve receive the educational benefits referred to in subsection (a) in a timely manner.

(c) STUDIES.—

(1) SECRETARY OF DEFENSE.—The Secretary of Defense shall conduct a study analyzing the effect of all Montgomery GI bill educational benefits on recruitment and retention during the 12-month period beginning on the date on which the enhanced benefits referred to in subsection (a) become available.

(2) SECRETARY OF VETERANS AFFAIRS.—The Secretary of Veterans Affairs shall conduct a study analyzing the effect of all Montgomery GI bill educational benefits on the readjustment of veterans eligible for educational benefits under section 3015 of title 38, United States Code, and chapters 1606 and 1607 of title 10, United States Code, during the 12-month period beginning on the date on which the enhanced benefits referred to in subsection (a) become available.

(3) REPORT.—Not later than 18 months after the date on which the enhanced benefits referred to in subsection (a) become available, the Secretary of Defense and the Secretary of Veterans Affairs shall submit a report on the results of the studies conducted under paragraphs (1) and (2) to—

(A) the Committee on Armed Services of the Senate;

(B) the Committee on Armed Services of the House of Representatives;

(C) the Committee on Veterans' Affairs of the Senate; and

(D) the Committee on Veterans' Affairs of the House of Representatives.

**SEC. 4. ADJUSTMENT AND ANNUAL DETERMINATION OF EDUCATIONAL ASSISTANCE UNDER THE MONTGOMERY GI BILL FOR CERTAIN MEMBERS OF THE SELECTED RESERVE.**

(a) INCREASE IN RATES.—Section 16131(b) of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking ''at the following rates:'' and inserting ''—''; and

(B) by striking subparagraphs (A) through (C) and inserting the following:

''(A) for a program of education pursued on a full-time basis—

''(i) $475 per month for months during fiscal year 2005; and

''(ii) for months during fiscal year 2006 and each subsequent fiscal year, the monthly amount under this subparagraph for the previous fiscal year multiplied by the percentage increase calculated under paragraph (2);

''(B) for a program of education pursued on a three-quarter-time basis—

''(i) $356 per month for months during fiscal year 2005; and

''(ii) for months during fiscal year 2006 and each subsequent fiscal year, the monthly amount under this subparagraph for the previous fiscal year multiplied by the percentage increase calculated under paragraph (2);

''(C) for a program of education pursued on a half-time basis—

''(i) $238 per month for months during fiscal year 2005; and

''(ii) for months during fiscal year 2006 and each subsequent fiscal year, the monthly amount under this subparagraph for the previous fiscal year multiplied by the percentage increase calculated under paragraph (2); and''; and

(2) in paragraph (2)—

(A) by inserting ''beginning on or after October 1, 2005'' after ''With respect to any fiscal year''; and

(B) in subparagraph (A), by striking ''all items'' and inserting ''college tuition and fees''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first month beginning after the date of enactment of this Act.

**SEC. 5. OPPORTUNITY FOR CERTAIN ACTIVE-DUTY PERSONNEL TO ENROLL UNDER THE MONTGOMERY GI BILL.**

(a) IN GENERAL.—Chapter 30 of title 38, United States Code, is amended by inserting after section 3018C the following:

**''§ 3018D. Opportunity for certain active-duty personnel to enroll**

''(a)(1) Notwithstanding any other provision of this chapter, during the 1-year period beginning on the date of enactment of this section, a qualified individual (described in subsection (b)) may make an irrevocable election under this section to receive basic educational assistance under this chapter.

''(2) The Secretary of each military department shall provide for procedures for a qualified individual to make an irrevocable election under this section in accordance with regulations prescribed by the Secretary of Defense for the purpose of carrying out this section or which the Secretary of Homeland Security shall provide for such purpose with respect to the Coast Guard when it is not operating as a service in the Navy.

''(b) A qualified individual referred to in subsection (a) is an individual who meets each of the following requirements:

''(1) The individual first became a member of the Armed Forces or first served on active duty as a member of the Armed Forces before July 1, 1985.

''(2) The individual—

''(A) has served on active duty without a break in service since the date the individual first became such a member or first served on active duty as such a member; and

''(B) continues to serve on active duty for some or all of the 1-year period described in subsection (a).

''(3) The individual, before applying for benefits under this section—

''(A) completed the requirements of a secondary school diploma (or equivalency certificate); or

''(B) has successfully completed (or otherwise received academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree.

''(4) The individual, when discharged or released from active duty, is discharged or released therefrom with an honorable discharge.

''(c)(1) Subject to paragraph (2), with respect to a qualified individual who elects under this section to receive basic educational assistance under this chapter—

''(A) the basic pay of the qualified individual shall be reduced (in a manner determined by the Secretary concerned) until the total amount by which such basic pay is reduced is $1,200; and

''(B) to the extent that basic pay is not reduced under subparagraph (A) before the qualified individual's discharge or release from active duty, an amount equal to the difference between $1,200 and the total amount of reductions under subparagraph (A), which shall be paid into the Treasury of

the United States as miscellaneous receipts, shall, at the election of the qualified individual, be—

''(i) collected from the qualified individual by the Secretary concerned; or

''(ii) withheld from the retired or retainer pay of the qualified individual by the Secretary concerned.

''(2)(A) The Secretary concerned shall provide for an 18-month period, beginning on the date the qualified individual makes an election under this section, for the qualified individual to pay that Secretary the amount due under paragraph (1).

''(B) Nothing in subparagraph (A) shall be construed as modifying the period of eligibility for and entitlement to basic educational assistance under this chapter applicable under section 3031 of this title.

''(d) With respect to qualified individuals referred to in subsection (c)(1)(B), no amount of educational assistance allowance under this chapter shall be paid to the qualified individual until the earlier of the date on which—

''(1) the Secretary concerned collects the applicable amount under subsection (c)(1)(B)(i); or

''(2) the retired or retainer pay of the qualified individual is first reduced under subsection (c)(1)(B)(ii).

''(e) The Secretary, in conjunction with the Secretary of Defense, shall provide for notice of the opportunity under this section to elect to become entitled to basic educational assistance under this chapter.''.

(b) CONFORMING AMENDMENTS.—Section 3017(b)(1) of title 38, United States Code, is amended—

(1) in subparagraphs (A) and (C), by striking ''or 3018C(e)'' and inserting ''3018C(e), or 3018D(c)''; and

(2) in subparagraph (B), by inserting ''or 3018D(c)'' after ''under section 3018C(e)''.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 30 of title 38, United States Code, is amended by inserting after the item relating to section 3018C the following:

''3018D. Opportunity for certain active-duty personnel to enroll.''.

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

S. 2166. A bill to direct the Election Assistance Commission to make grants to States to restore and replace election administration supplies, materials, records, equipment, and technology which were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita; to the Committee on Rules and Administration.

Mr. LOTT. Mr. President, I rise today to introduce the Hurricane Election Relief Act of 2005. I thank my friend Senator DODD—the ranking member of the committee I chair, the Senate Committee on Rules and Administration—for joining me in sponsoring this important legislation.

It has now been over three months since Hurricanes Katrina and Rita wreaked havoc throughout the gulf coast region, leaving almost unimaginable wreckage and destruction in their wakes. The good people in the region have suffered a terrible toll in terms of lives lost and property destroyed. Though their plight no longer dominates the headlines, the difficulties and hardships that these individuals continue to confront on a daily basis remain formidable. However, one thing that gulf coast residents should not have to face in the aftermath of the hurricanes is an impediment to their ability to fully participate in our Nation's democracy. The right to vote must not become a further casualty of Hurricanes Katrina and Rita.

The hurricane-related damage to election infrastructure was extensive throughout my home State of Mississippi as well as Louisiana and other gulf States. Voting equipment was destroyed; voter records were lost; polling places were leveled. If this infrastructure is not restored in a timely manner, the voting rights of thousands of citizens in the region will be substantially impaired. This is not acceptable.

But replacing damaged and destroyed election equipment and technology is not the only election-related challenge these States face. Thousands and thousands of individuals were forced to evacuate their homes and their communities and relocate to other areas and, in some instances, other States. Large numbers of these displaced individuals will not be able to return to their homes anytime soon. Consequently, if these citizens are going to participate in the upcoming elections that will shape the rebuilding efforts in their communities, they will have to do so largely by means of absentee ballots. This increased demand for absentee ballots will, in turn, present significant logistical challenges for localities that are already cash-strapped and struggling to recover in the aftermath of Hurricanes Katrina and Rita. Therefore, to ensure that gulf coast residents remain fully enfranchised, it is essential that the impacted States receive sufficient resources to restore their election infrastructure to pre-hurricane levels.

For this reason, I am proud to introduce today the Hurricane Election Relief Act of 2005, which provides much needed funds to the States that bore the brunt of Hurricanes Katrina and Rita to aid them in rebuilding election infrastructure that was damaged or destroyed. Specifically, the Hurricane Election Relief Act authorizes $50 million in grants to be distributed by the Election Assistance Commission, EAC, to assist affected States in restoring and replacing supplies, materials, records, equipment, and technology used in administering Federal elections that were damaged, destroyed, or dislocated as a result of the hurricanes. The act also permits the authorized funds to be used to ensure the full electoral participation of displaced individuals. Thus, State and local election officials could use monies furnished by the act to offset the costs associated with printing and processing voter registration and absentee ballot materials for displaced voters. Finally, the use of the funds provided under this act would have to be consistent with the requirements of Title III of the Help America Vote Act of 2002.

Much work remains to be done to help the communities impacted by Hurricanes Katrina and Rita get back on their feet. I realize this fact more than most. Thus, it is my hope that my fellow Senators will enthusiastically support this important legislation, which will ensure that those individuals in my home State as well as those in the surrounding States whose lives were thrown into such turmoil as a result of the hurricanes will retain their ability to fully exercise their right to vote.

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. 2166

*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 ''Hurricane Election Relief Act of 2005''.

**SEC. 2. GRANTS TO STATES FOR RESTORING AND REPLACING ELECTION ADMINISTRATION SUPPLIES, MATERIALS, RECORDS, EQUIPMENT, AND TECHNOLOGY WHICH WERE DAMAGED, DESTROYED, OR DISLOCATED BY HURRICANES KATRINA OR RITA.**

(a) AUTHORITY TO MAKE GRANTS.—The Election Assistance Commission shall make a grant to each eligible State, in such amount as the Commission considers appropriate, for purposes of restoring and replacing supplies, materials, records, equipment, and technology used in the administration of Federal elections in the State which were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita and ensuring the full participation in such elections by individuals who were displaced as a result of Hurricane Katrina or Hurricane Rita.

(b) USE OF GRANT FUNDS.—Funds received under a grant under subsection (a) shall be used in a manner that is consistent with the requirements of title III of the Help America Vote Act of 2002.

(c) ELIGIBILITY.—A State is eligible to receive a grant under this section if it submits to the Commission (at such time and in such form as the Commission may require) a certification that—

(1) supplies, materials, records, equipment, and technology used in the administration of Federal elections in the State were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita; or

(2) the system of such State for conducting Federal elections has been significantly impacted by the displacement of individuals as a result of Hurricane Katrina or Hurricane Rita.

**SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated for fiscal year 2006 for grants under this Act $50,000,000, to remain available until expended.

Mr. DODD. Mr. President, nearly three months have passed since Hurricanes Katrina and Rita ravaged the lives of the good people of our Gulf Coast region. Congress has taken great efforts to address the immediate needs of those affected by the hurricanes and continues to consider how we can assist the long-term needs of these communities. I previously came to the floor with the distinguished Chairman of the Senate Rules Committee, Senator LOTT, to discuss the needs for

funding to restore the elections infrastructure of the impacted States, including not just those directly hit by the storms but also States that welcomed and provided shelter to those displaced by the storms.

As the ranking member of the Rules Committee, I rise today to introduce with Senator LOTT, the Hurricane Election Relief Act of 2005, a bill that authorizes the necessary funding to impacted States for the purpose of ensuring that they will be capable of conducting the up-coming Federal elections next year, consistent with the Help America Vote Act ("HAVA'). This bill will ensure that impacted States will be able to strengthen the foundation of our democracy and the process by which we build communities. Specifically, this bill provides funding to States to restore and replace supplies, materials, records, equipment and technology that were damaged, destroyed, or dislocated as result of the storms. The Election Assistance Commission (EAC) is charged with distribution of the appropriate funding to the States.

Earlier this month, Louisiana Secretary of State Al Ater postponed for up to eight months the elections for mayor and City Council in New Orleans from the scheduled February 4, 2006 date, after explaining that the infrastructure to hold an election is simply absent. Secretary of State Alter noted that polling places must be rebuilt, voting systems must be repaired, poll workers must be located, and a system to process the anticipated increase in absentee ballots must be developed. Following the storms, Ater requested $2 million from the Federal Emergency Management Agency (FEMA) solely to repair voting machines. To date, he has not received any of the requested funds and there does not yet appear to be a projected FEMA disbursement date for such funds.

Mississippi Secretary of State Eric Clark surveyed the 43 counties affected by the storms in his State and announced that in order to facilitate elections without long lines, Mississippi needs $3.3 million to replace 966 voting machines as well as additional funding to assure that the counties meet the HAVA requirements effective January 1, 2006.

In light of the above, it is essential that we rise and join together to ensure that all States, including those States impacted by the hurricanes, may conduct timely Federal elections that enable every eligible voter to cast a vote and have that vote counted, regardless of race, ethnicity, language, age, disability or community resources. The health of our democracy depends upon it.

As we approach the end of the first session of the 109th Congress and prepare to return to the comfort of our families and constituents, let us give thanks for the well-being of our communities and provide the authority to allocate funding to those States which are rebuilding their communities in the aftermath of these devastating natural disasters.

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By Ms. SNOWE (for herself and Mr. NELSON of Florida):

S. 2168. A bill to amend title XVIII of the Social Security Act to provide extended and additional protections to Medicare beneficiaries enrolled under part C or D or such title; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Medicare Drug Benefit Protections Act of 2005 with my colleague, Senator BILL NELSON. Our bill provides additional protections for Medicare beneficiaries enrolling in the new Medicare Part D prescription drug benefit, protections which we believe are essential. Our bill extends the initial enrollment period for the new benefit until the end of 2006, provides more flexibility for beneficiaries to change plans, and adds crucial protections for those enrolled in a plan.

We are now in the midst of the rollout of the new Medicare drug benefit, and, as of November 15, seniors and individuals with disabilities on Medicare have begun enrolling in various plans. Unfortunately, many seniors are confused and angry, frustrated and concerned that they do not have adequate information about the plans being offered. Seniors may ultimately decide not to enroll in a plan if they do not have enough expert assistance—readily available and accessible—to help them choose an appropriate plan. To make matters worse, many say the information available from the Centers for Medicare and Medicaid Services, CMS, the agency overseeing the plan, is either not helpful or simply overwhelming.

Beneficiaries are worried they could make a poor choice in selecting a plan and that, once enrolled, the drugs offered by the plan they choose may not be the drugs they need. We must assure them that they will not be saddled with monthly premiums for plans which, in the end, do not adequately cover their prescription drug needs.

Our bill would address these concerns in several ways. The bill includes two provisions from Senator NELSON's bill, the Medicare Informed Choice Act of 2005, which give beneficiaries additional protection. The bill extends the initial six-month period for enrolling in a plan from May 15, 2006, to December 31, 2006, thus delaying late enrollment penalties until 2007 and giving beneficiaries the rest of this year and all of next year to decide whether to enroll in a plan. Once beneficiaries have enrolled in a plan, the bill provides a one-time opportunity during 2006 to change to another plan without penalty, should they wish to do so.

The Medicare Drug Benefit Protections Act includes additional safeguards, as well. Seniors are getting misinformation from the CMS website, especially in regard to the cost of drugs being offered by certain plans. Seniors in my home State of Maine have experienced serious problems with inaccurate drug pricing information being provided by the CMS website devoted to the new Medicare Part D plans, www.medicare.gov. In one instance, the CMS website quoted one price for a senior's drug costs for 2006 but the plan itself quoted a cost of approximately $2,000 more than the CMS website. Under our bill, beneficiaries could change plans without penalty if they relied on misinformation from CMS to their detriment.

Beneficiaries would also be allowed to change plans without penalty should their circumstances change significantly, due to medical reasons, for example. Beneficiaries who meet these criteria would have an extended period of time to change plans, a minimum of four months rather than the current 90 days. The bill would also extend the annual open season, as of 2007, from November 15th through December 31st, to a full two months, from November 1st through December 31st, in order to allow all beneficiaries more time outside the busy and travel-filled holiday season to study and compare plans should they wish to make a change.

Finally, our bill authorizes $25 million in funding for grants to States, non-profit organizations, and other entities to conduct additional education and outreach efforts on the drug benefit during fiscal years 2007 and 2008.

Our goal is to ensure that beneficiaries have sufficient time, comfort, and peace of mind to understand the new drug benefit and enroll in a plan well-suited to their needs so they can derive the much-needed assistance with their prescription drugs offered by these plans. We must provide flexibility, safeguards, and outreach efforts beyond what currently exists to reduce the anxiety and frustration that too many seniors are experiencing today.

The new Medicare drug benefit is the first comprehensive outpatient prescription drug benefit in the 40-year history of Medicare. The benefit is not perfect by any means, but rather a beginning. I will continue working to improve this benefit so that it will truly deliver the assistance that our seniors so desperately need and deserve to have.

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By Mr. FRIST (for himself, Mr. BIDEN, and Mr. LUGAR):

S. 2170. A bill to provide for global pathogen surveillance and response; read twice.

Mr. FRIST. 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. 2170

*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 ''Global Pathogen Surveillance Act of 2005''.

**SEC. 2. FINDINGS; PURPOSE.**

(a) FINDINGS.—Congress makes the following findings:

(1) The frequency of the occurrence of biological events that could threaten the national security of the United States has increased and is likely increasing. The threat to the United States from such events includes threats from diseases that infect humans, animals, or plants regardless of if such diseases are introduced naturally, accidentally, or intentionally.

(2) The United States lacks an effective and real-time system to detect, identify, contain, and respond to global threats and also lacks an effective mechanism to disseminate information to the national response community if such threats arise.

(3) Bioterrorism poses a grave national security threat to the United States. The insidious nature of a bioterrorist attack, the likelihood that the recognition of such an attack would be delayed, and the underpreparedness of the domestic public health infrastructure to respond to such an attack could result in catastrophic consequences following a biological weapons attack against the United States.

(4) The ability to recognize that a country or organization is carrying out a covert biological weapons programs is dependent on a number of indications and warnings. A critical component of this recognition is the timely detection of sentinel events such as laboratory accidents and community-level outbreaks that could be the earliest indication of an emerging bioterrorist program in a foreign country. Early detection of such events may enable earlier counterproliferation intervention.

(5) A contagious pathogen engineered as a biological weapon and developed, tested, produced, or released in a foreign country could quickly spread to the United States. Considering the realities of international travel, trade, and migration patterns, a dangerous pathogen appearing naturally, accidentally, or intentionally anywhere in the world can spread to the United States in a matter of days, before any effective quarantine or isolation measures could be implemented.

(6) To combat bioterrorism effectively and ensure that the United States is fully prepared to prevent, recognize, and contain a biological weapons attack, or emerging infectious disease, measures to strengthen the domestic public health infrastructure and improve domestic event detection, surveillance, and response, while absolutely essential, are not sufficient.

(7) The United States should enhance cooperation with the World Health Organization, regional international health organizations, and individual countries, including data sharing with appropriate agencies and departments of the United States, to help detect and quickly contain infectious disease outbreaks or a bioterrorism agent before such a disease or agent is spread.

(8) The World Health Organization has done an impressive job in monitoring infectious disease outbreaks around the world, particularly with the establishment in April 2000 of the Global Outbreak Alert and Response Network.

(9) The capabilities of the World Health Organization depend on the quality of the data and information the Organization receives from the countries that are members of the Organization and is further limited by the narrow list of diseases (such as plague, cholera, and yellow fever) on which such surveillance and monitoring is based and by the consensus process used by the Organization to add new diseases to the list. Developing countries, in particular, often are unable to devote the necessary resources to build and maintain public health infrastructures.

(10) In particular, developing countries could benefit from—

(A) better trained public health professionals and epidemiologists to recognize disease patterns;

(B) appropriate laboratory equipment for diagnosis of pathogens;

(C) disease reporting systems that—

(i) are based on disease and syndrome surveillance; and

(ii) could enable an effective response to a biological event to begin at the earliest possible opportunity;

(D) a narrowing of the existing technology gap in disease and syndrome surveillance capabilities, based on reported symptoms, and real-time information dissemination to public health officials; and

(E) appropriate communications equipment and information technology to efficiently transmit information and data within national, international regional, and international health networks, including inexpensive, Internet-based Geographic Information Systems (GIS) and relevant telephone-based systems for early recognition and diagnosis of diseases.

(11) An effective international capability to detect, monitor, and quickly diagnose infectious disease outbreaks will offer dividends not only in the event of biological weapons development, testing, production, and attack, but also in the more likely cases of naturally occurring infectious disease outbreaks that could threaten the United States. Furthermore, a robust surveillance system will serve to deter, prevent, or contain terrorist use of biological weapons, mitigating the intended effects of such malevolent uses.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To provide the United States with an effective and real-time system to detect biological threats that—

(A) utilizes classified and unclassified information to detect such threats; and

(B) may be utilized by the human or the agricultural domestic disease response community.

(2) To enhance the capability of the international community, through the World Health Organization and individual countries, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

(3) To enhance the training of public health professionals and epidemiologists from eligible developing countries in advanced Internet-based disease and syndrome surveillance systems, in addition to traditional epidemiology methods, so that such professionals and epidemiologists may better detect, diagnose, and contain infectious disease outbreaks, especially such outbreaks caused by the pathogens that may be likely to be used in a biological weapons attack.

(4) To provide assistance to developing countries to purchase appropriate communications equipment and information technology to detect, analyze, and report biological threats, including—

(A) relevant computer equipment, Internet connectivity mechanisms, and telephone-based applications to effectively gather, analyze, and transmit public health information for infectious disease surveillance and diagnosis; and

(B) appropriate computer equipment and Internet connectivity mechanisms—

(i) to facilitate the exchange of Geographic Information Systems-based disease and syndrome surveillance information; and

(ii) to effectively gather, analyze, and transmit public health information for infectious disease surveillance and diagnosis.

(5) To make available greater numbers of public health professionals who are employed by the Government of the United States to international regional and international health organizations, international regional and international health networks, and United States diplomatic missions, as appropriate.

(6) To expand the training and outreach activities of United States laboratories located in foreign countries, including the Centers for Disease Control and Prevention or Department of Defense laboratories, to enhance the public health capabilities of developing countries.

(7) To provide appropriate technical assistance to existing international regional and international health networks and, as appropriate, seed money for new international regional and international networks.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) ELIGIBLE DEVELOPING COUNTRY.—The term ''eligible developing country'' means any developing country that—

(A) has agreed to the objective of fully complying with requirements of the World Health Organization on reporting public health information on outbreaks of infectious diseases;

(B) has not been determined by the Secretary, for purposes of section 40 of the Arms Export Control Act (22 U.S.C. 2780), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 6(j) of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.), to have repeatedly provided support for acts of international terrorism, unless the Secretary exercises a waiver certifying that it is in the national interest of the United States to provide assistance under the provisions of this Act; and

(C) is a party to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at Washington, London, and Moscow April 10, 1972 (26 UST 583).

(2) ELIGIBLE NATIONAL.—The term ''eligible national'' means any citizen or national of an eligible developing country who—

(A) does not have a criminal background;

(B) is not on any immigration or other United States watch list; and

(C) is not affiliated with any foreign terrorist organization.

(3) INTERNATIONAL HEALTH ORGANIZATION.—The term ''international health organization'' includes the World Health Organization, regional offices of the World Health Organization, and international health organizations, such as the Pan American Health Organization.

(4) LABORATORY.—The term ''laboratory'' means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other medical examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(5) SECRETARY.—Unless otherwise provided, the term ''Secretary'' means the Secretary of State.

(6) DISEASE AND SYNDROME SURVEILLANCE.—The term ''disease and syndrome surveillance'' means the recording of clinician-reported symptoms (patient complaints) and signs (derived from physical examination and laboratory data) combined with simple geographic locators to track the emergence of a disease in a population.

**SEC. 4. ELIGIBILITY FOR ASSISTANCE.**

(a) IN GENERAL.—Except as provided in subsection (b), assistance may be provided to an eligible developing country under any provision of this Act only if the government of the eligible developing country—

(1) permits personnel from the World Health Organization and the Centers for Disease Control and Prevention to investigate outbreaks of infectious diseases within the borders of such country; and

(2) provides pathogen surveillance data to the appropriate agencies and departments of the United States and to international health organizations.

(b) WAIVER.—The Secretary may waive the prohibition set out in subsection (a) if the Secretary determines that it is in the national interest of the United States to provide such a waiver.

**SEC. 5. RESTRICTION.**

(a) IN GENERAL.—Notwithstanding any other provision of this Act, no foreign national participating in a program authorized under this Act shall have access, during the course of such participation, to a select agent or toxin described in section 73.4 of title 42, Code of Federal Regulations (or any corresponding similar regulation) or an overlap select agent or toxin described in section 73.5 of such title (or any corresponding similar regulation) that may be used as, or in, a biological weapon, except in a supervised and controlled setting.

(b) RELATIONSHIP TO REGULATIONS.—The restriction set out in subsection (a) may not be construed to limit the ability of the Secretary of Health and Human Services to prescribe, through regulation, standards for the handling of a select agent or toxin or an overlap select agent or toxin described in such subsection.

**SEC. 6. FELLOWSHIP PROGRAM.**

(a) ESTABLISHMENT.—There is established a fellowship program under which the Secretary, in consultation with the Secretary of Health and Human Services and subject to the availability of appropriations, shall award fellowships to eligible nationals to pursue public health education or training, as follows:

(1) MASTER OF PUBLIC HEALTH DEGREE.—Graduate courses of study leading to a master of public health degree with a concentration in epidemiology from an institution of higher education in the United States with a Center for Public Health Preparedness, as determined by the Director of the Centers for Disease Control and Prevention.

(2) ADVANCED PUBLIC HEALTH EPIDEMIOLOGY TRAINING.—Advanced public health training in epidemiology for public health professionals from eligible developing countries to be carried out at the Centers for Disease Control and Prevention, an appropriate facility of a State, or an appropriate facility of another agency or department of the United States (other than a facility of the Department of Defense or a national laboratory of the Department of Energy) for a period of not less than 6 months or more than 12 months.

(b) SPECIALIZATION IN BIOTERRORISM.—In addition to the education or training specified in subsection (a), each recipient of a fellowship under this section (in this section referred to as a ''fellow'') may take courses of study at the Centers for Disease Control and Prevention or at an equivalent facility on diagnosis and containment of likely bioterrorism agents.

(c) FELLOWSHIP AGREEMENT.—

(1) IN GENERAL.—A fellow shall enter into an agreement with the Secretary under which the fellow agrees—

(A) to maintain satisfactory academic progress, as determined in accordance with regulations issued by the Secretary and confirmed in regularly scheduled updates to the Secretary from the institution providing the education or training on the progress of the fellow's education or training;

(B) upon completion of such education or training, to return to the fellow's country of nationality or last habitual residence (so long as it is an eligible developing country) and complete at least 4 years of employment in a public health position in the government or a nongovernmental, not-for-profit entity in that country or, with the approval of the Secretary, complete part or all of this requirement through service with an international health organization without geographic restriction; and

(C) that, if the fellow is unable to meet the requirements described in subparagraph (A) or (B), the fellow shall reimburse the United States for the value of the assistance provided to the fellow under the fellowship program, together with interest at a rate that—

(i) is determined in accordance with regulations issued by the Secretary; and

(ii) is not higher than the rate generally applied in connection with other Federal loans.

(2) WAIVERS.—The Secretary may waive the application of subparagraph (B) or (C) of paragraph (1) if the Secretary determines that it is in the national interest of the United States to provide such a waiver.

(d) AGREEMENT.—The Secretary, in consultation with the Secretary of Health and Human Services, is authorized to enter into an agreement with the government of an eligible developing country under which such government agrees—

(1) to establish a procedure for the nomination of eligible nationals for fellowships under this section;

(2) to guarantee that a fellow will be offered a professional public health position within the developing country upon completion of the fellow's studies; and

(3) to submit to the Secretary a certification stating that a fellow has concluded the minimum period of employment in a public health position required by the fellowship agreement, including an explanation of how the requirement was met.

(e) PARTICIPATION OF UNITED STATES CITIZENS.—On a case-by-case basis, the Secretary may provide for the participation of a citizen of the United States in the fellowship program under the provisions of this section if—

(1) the Secretary determines that it is in the national interest of the United States to provide for such participation; and

(2) the citizen of the United States agrees to complete, at the conclusion of such participation, at least 5 years of employment in a public health position in an eligible developing country or at an international health organization.

(f) USE OF EXISTING PROGRAMS.—The Secretary, with the concurrence of the Secretary of Health and Human Services, may elect to use existing programs of the Department of Health and Human Services to provide the education and training described in subsection (a) if the requirements of subsections (b), (c), and (d) will be substantially met under such existing programs.

**SEC. 7. IN-COUNTRY TRAINING IN LABORATORY TECHNIQUES AND DISEASE AND SYNDROME SURVEILLANCE.**

(a) LABORATORY TECHNIQUES.—

(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health and Human Services and in conjunction with the Director of the Centers for Disease Control and Prevention and the Secretary of Defense, and subject to the availability of appropriations, shall provide assistance for short training courses for eligible nationals who are laboratory technicians or other public health personnel in laboratory techniques relating to the identification, diagnosis, and tracking of pathogens responsible for possible infectious disease outbreaks.

(2) LOCATION.—The training described in paragraph (1) shall be held outside the United States and may be conducted in facilities of the Centers for Disease Control and Prevention located in foreign countries or in Overseas Medical Research Units of the Department of Defense, as appropriate.

(3) COORDINATION WITH EXISTING PROGRAMS.—The Secretary shall coordinate the training described in paragraph (1), where appropriate, with existing programs and activities of international health organizations.

(b) DISEASE AND SYNDROME SURVEILLANCE.—

(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health and Human Services and in conjunction with the Director of the Centers for Disease Control and Prevention and the Secretary of Defense and subject to the availability of appropriations, shall establish and provide assistance for short training courses for eligible nationals who are health care providers or other public health personnel in techniques of disease and syndrome surveillance reporting and rapid analysis of syndrome information using Geographic Information System (GIS) tools.

(2) LOCATION.—The training described in paragraph (1) shall be conducted via the Internet or in appropriate facilities located in a foreign country, as determined by the Secretary.

(3) COORDINATION WITH EXISTING PROGRAMS.—The Secretary shall coordinate the training described in paragraph (1), where appropriate, with existing programs and activities of international regional and international health organizations.

**SEC. 8. ASSISTANCE FOR THE PURCHASE AND MAINTENANCE OF PUBLIC HEALTH LABORATORY EQUIPMENT AND SUPPLIES.**

(a) AUTHORIZATION.—The President is authorized to provide, on such terms and conditions as the President may determine, assistance to eligible developing countries to purchase and maintain the public health laboratory equipment and supplies described in subsection (b).

(b) EQUIPMENT AND SUPPLIES COVERED.—The equipment and supplies described in this subsection are equipment and supplies that are—

(1) appropriate, to the extent possible, for use in the intended geographic area;

(2) necessary to collect, analyze, and identify expeditiously a broad array of pathogens, including mutant strains, which may cause disease outbreaks or may be used in a biological weapon;

(3) compatible with general standards set forth by the World Health Organization and, as appropriate, the Centers for Disease Control and Prevention, to ensure interoperability with international regional and international public health networks; and

(4) not defense articles, defense services, or training, as such terms are defined in the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment or supplies that, if made in the United States, would be subject

to the Arms Export Control Act (22 U.S.C. 2751 et seq.) or likely be barred or subject to special conditions under the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.).

(e) PROCUREMENT PREFERENCE.—In the use of grant funds authorized under subsection (a), preference should be given to the purchase of equipment and supplies of United States manufacture. The use of amounts appropriated to carry out this section shall be subject to section 604 of the Foreign Assistance Act of 1961 (22 U.S.C. 2354).

(f) COUNTRY COMMITMENTS.—The assistance provided under this section for equipment and supplies may be provided only if the eligible developing country that receives such equipment and supplies agrees to provide the infrastructure, technical personnel, and other resources required to house, maintain, support, secure, and maximize use of such equipment and supplies.

**SEC. 9. ASSISTANCE FOR IMPROVED COMMUNICATION OF PUBLIC HEALTH INFORMATION.**

(a) ASSISTANCE FOR PURCHASE OF COMMUNICATION EQUIPMENT AND INFORMATION TECHNOLOGY.—The President is authorized to provide, on such terms and conditions as the President may determine, assistance to eligible developing countries to purchase and maintain the communications equipment and information technology described in subsection (b), and the supporting equipment, necessary to effectively collect, analyze, and transmit public health information.

(b) COVERED EQUIPMENT.—The communications equipment and information technology described in this subsection are communications equipment and information technology that—

(1) are suitable for use under the particular conditions of the area of intended use;

(2) meet the standards set forth by the World Health Organization and, as appropriate, the Secretary of Health and Human Services, to ensure interoperability with like equipment of other countries and international organizations; and

(3) are not defense articles, defense services, or training, as those terms are defined in the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of communications equipment or information technology that, if made in the United States, would be subject to the Arms Export Control Act (22 U.S.C. 2751 et seq.) or likely be barred or subject to special conditions under the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.).

(e) PROCUREMENT PREFERENCE.—In the use of grant funds under subsection (a), preference should be given to the purchase of communications equipment and information technology of United States manufacture. The use of amounts appropriated to carry out this section shall be subject to section 604 of the Foreign Assistance Act of 1961 (22 U.S.C. 2354).

(f) ASSISTANCE FOR STANDARDIZATION OF REPORTING.—The President is authorized to provide, on such terms and conditions as the President may determine, technical assistance and grant assistance to international health organizations to facilitate standardization in the reporting of public health information between and among developing countries and international health organizations.

(g) COUNTRY COMMITMENTS.—The assistance provided under this section for communications equipment and information technology may be provided only if the eligible developing country that receives such equipment and technology agrees to provide the infrastructure, technical personnel, and other resources required to house, maintain, support, secure, and maximize use of such equipment and technology.

**SEC. 10. ASSIGNMENT OF PUBLIC HEALTH PERSONNEL TO UNITED STATES MISSIONS AND INTERNATIONAL ORGANIZATIONS.**

(a) IN GENERAL.—Upon the request of the chief of a diplomatic mission of the United States or of the head of an international regional or international health organization, and with the concurrence of the Secretary and of the employee concerned, the head of an agency or department of the United States may assign to the mission or the organization any officer or employee of the agency or department that occupies a public health position within the agency or department for the purpose of enhancing disease and pathogen surveillance efforts in developing countries.

(b) REIMBURSEMENT.—The costs incurred by an agency or department of the United States by reason of the detail of personnel under subsection (a) may be reimbursed to that agency or department out of the applicable appropriations account of the Department of State if the Secretary determines that the agency or department may otherwise be unable to assign such personnel on a non-reimbursable basis.

**SEC. 11. EXPANSION OF CERTAIN UNITED STATES GOVERNMENT LABORATORIES ABROAD.**

(a) IN GENERAL.—Subject to the availability of appropriations, the Director of the Centers for Disease Control and Prevention and the Secretary of Defense shall each—

(1) increase the number of personnel assigned to laboratories of the Centers for Disease Control and Prevention or the Department of Defense, as appropriate, located in eligible developing countries that conduct research and other activities with respect to infectious diseases; and

(2) expand the operations of such laboratories, especially with respect to the implementation of on-site training of foreign nationals and activities affecting the region in which the country is located.

(b) COOPERATION AND COORDINATION BETWEEN LABORATORIES.—Subsection (a) shall be carried out in such a manner as to foster cooperation and avoid duplication between and among laboratories.

(c) RELATION TO CORE MISSIONS AND SECURITY.—The expansion of the operations of the laboratories of the Centers for Disease Control and Prevention or the Department of Defense located in foreign countries under this section may not—

(1) detract from the established core missions of the laboratories; or

(2) compromise the security of those laboratories, as well as their research, equipment, expertise, and materials.

**SEC. 12. ASSISTANCE FOR INTERNATIONAL HEALTH NETWORKS AND EXPANSION OF FIELD EPIDEMIOLOGY TRAINING PROGRAMS.**

(a) AUTHORITY.—The President is authorized, on such terms and conditions as the President may determine, to provide assistance for the purposes of—

(1) enhancing the surveillance and reporting capabilities for the World Health Organization and existing international regional and international health networks; and

(2) developing new international regional and international health networks.

(b) EXPANSION OF FIELD EPIDEMIOLOGY TRAINING PROGRAMS.—The Secretary of Health and Human Services is authorized to establish new country or regional international Field Epidemiology Training Programs in eligible developing countries.

**SEC. 13. FOREIGN BIOLOGICAL THREAT DETECTION AND WARNING.**

(a) IN GENERAL.—The President shall establish the Office of Foreign Biological Threat Detection and Warning within either the Department of Defense, the Central Intelligence Agency, or the Centers for Disease Control and Prevention with the technical ability to conduct event detection and rapid threat assessment related to biological threats in foreign countries.

(b) PURPOSES.—The purposes of the Office of Foreign Biological Threat Detection and Warning shall be—

(1) to integrate public health, medical, agricultural, societal, and intelligence indications and warnings to identify in advance the emergence of a transnational biological threat;

(2) to provide rapid threat assessment capability to the appropriate agencies or departments of the United States that is not dependent on access to—

(A) a specific biological agent;

(B) the area in which such agent is present; or

(C) information related to the means of introduction of such agent; and

(3) to build the information visibility and decision support activities required for appropriate and timely information distribution and threat response.

(c) TECHNOLOGY.—The Office of Foreign Biological Threat Detection and Warning shall employ technologies similar to, but no less capable than, those used by the Intelligence Technology Innovation Center (ITIC) within the Directorate of Science and Technology of the Central Intelligence Agency to conduct real-time, prospective, automated threat assessments that employ social disruption factors.

(d) EVENT DETECTION DEFINED.—In this section, the term ''event detection'' refers to the real-time and rapid recognition of a possible biological event that has appeared in a community and that could have national security implications, regardless of whether the event is caused by natural, accidental, or intentional means and includes scrutiny of such possible biological event by analysts utilizing classified and unclassified information.

**SEC. 14. REPORTS.**

Not later than 90 days after the date of enactment of this Act, the Secretary, in conjunction with the Secretary of Health and Human Services and the Secretary of Defense, shall submit to Congress a report on the implementation of programs under this Act, including an estimate of the level of funding required to carry out such programs at a sufficient level.

**SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Subject to subsection (c), there is authorized to be appropriated for fiscal year 2006 such sums as may be necessary to carry out this Act.

(b) AVAILABILITY OF FUNDS.—The amount appropriated pursuant to subsection (a) is authorized to remain available until expended.

(c) LIMITATION ON OBLIGATION OF FUNDS.—Not more than 10 percent of the amount appropriated pursuant to subsection (a) may be obligated before the date on which a report is submitted, or required to be submitted, whichever first occurs, under section 14.

By Ms. LANDRIEU:

S. 2171. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the temporary mortgage and rental payments program; to the Committee on Homeland Security and Governmental Affairs.

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By Ms. LANDRIEU:

S. 2172. A bill to provide for response to Hurricane Katrina by establishing a Louisiana Recovery Corporation, providing for housing and community rebuilding, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Ms. LANDRIEU. Mr. President, I will speak just for a moment about each of these important measures. Before I do, I know today has been a long day, and it has been complicated by many procedural votes and a series of bills that we just passed out of here, many important bills. Of course, the Defense appropriations, Defense authorization bill, two of the major bills that Congress works on throughout the year, and it is important we get them through.

On the Defense appropriations bill, as it was amended, there was a very important piece for the gulf coast, $29 billion direct relief package. I will speak just for a moment about that because it has bearing on what we are going to do in the future when we are faced with catastrophic events.

Senator VITTER and I, my colleague from Louisiana, returned to the Congress over 4 months ago to try to describe to our colleagues the devastation that occurred with not one but two hurricanes and then multiple levee breaks which have devastated a major American city and a region, the southern part of Louisiana and Mississippi.

I have said now on many occasions that FEMA, on its best day, is not adequate to address the emergency and enormous needs of the people who have been affected: their need for housing, their need for employment, their need for capital, their need for emotional security, their need for public infrastructure, their need for police, their need for firefighters, their need for health care, their need for education.

I cannot even describe the tremendous angst, anxiety, and despair setting in on many communities in the gulf coast region because help has been slow in coming. And when it has been offered, it has been inadequate to address the situation we find ourselves in.

I do not know if we have ever considered what needs to be done when we have a catastrophic incident such as we had. So we are going to come back after the recess and I hope talk about how FEMA can be restructured, how it can be made to be more efficient, how it can be made to be more accountable, how it can be made to act more quickly. But we are also going to need some additional tools.

That is what the two bills address I have introduced tonight as a companion to a House bill that was introduced and has been worked on very diligently by my colleague Congressman RICHARD BAKER from Baton Rouge, who is the ranking member on the Banking Committee in the House. He has done some excellent work on this bill and has moved it out of the House committee. It establishes a brand new corporation that can step in. It would be established by appointment by the President and by the Governor, with seven members, to establish a corporation that could then access the capital markets by issuing bonds, to step up and into the gulf coast area to work with our local officials, to work with the officials at the city level, at the parish level, to provide opportunities, to provide equity for homeowners who find themselves with homes that are uninhabitable, with mortgages that need to be paid and no possible way to sell their property because it is of questionable value, given the situation.

We are very fortunate in America that we have not had to face these tragedies very often, and this is the first time we faced a tragedy of this magnitude. Mr. President, 275,000 homes destroyed, 10 times the amount of homes destroyed by Hurricane Andrew in 1992. Mr. President, 28,000 homes were destroyed in the worst disaster before we faced Rita and Katrina. But with 275,000 homes destroyed, clearly, we have to do more than send money through FEMA.

Money is not the only answer for the challenges before us. So we need new tools. That is why I have come to the Senate tonight to introduce, after a long day, a bill that was crafted in the House by Congressman BAKER, amended through input from a variety of his colleagues in the House, input from myself and some Senators in anticipation of the bill moving over here, and have had a verbal commitment from Senator SHELBY, the chairman of the Banking Committee, and very positive comments from Democrats on the Banking Committee that we could have an expedited hearing on this bill when we return.

Because even with the $29 billion in direct aid that is included in the Defense appropriations bill, I can promise my colleagues, to stand up the great city of New Orleans and the region and the gulf coast is going to take more than FEMA, more than direct aid through community development block grants and aid to our schools and universities and hospitals. It is going to take some new tools we are going to have to invent, we are going to have to place into a toolbox and then give out to local elected officials, to business leaders, to community organizations, to rebuild this great community.

But the great opportunity is, if we can invent these tools, and we can design them appropriately, they will then be available for us in the event a catastrophe such as this or something similar strikes again, whether it is an earthquake in San Francisco, massive tornadoes in the Midwest or, God forbid, a terror strike that would decimate or destroy a population or vast area such as we are experiencing from a hurricane and levee breaks in New Orleans.

There is all this work we can do on this housing corporation bill when we get back. I urge my colleagues' involvement because of the extraordinary need, as outlined and expressed so beautifully by Senator STEVENS' remarks toward the end of this evening about how he was so emotionally taken aback by what he saw in New Orleans. I can most certainly understand it. Senator VITTER and I have been living that as we have moved through New Orleans and the region and all through south Louisiana, and share his view that more has to be done.

So these two bills that I introduce—one is a companion bill to Congressman BAKER's bill with some important, I think, improvements or important amendments. One is to ensure a strong local input through local advisory committees, appointed by parish governments and municipalities. Also there is an underlining or emphasis, if you will, that the corporation must comply with State and local planning ordinances and direction.

This Senate version will also increase the potential equity recovery from 60 percent to 80 percent and will increase the potential cap of recovery from $500,000 to $750,000. We also put something in this bill to try to give corporate or commercial property owners some relief.

So between the Baker bill in the House, which needs to continue to move through the process, and this bill which will get, hopefully, some expedited hearings when we return, hopefully, we can quickly put into the hands of our communities, our large cities, our suburban areas, our rural areas, and individual property owners—who have seen in the last 4 months everything they have worked for in their life, perhaps even a little bit they were able to inherit, and all they hoped to pass on to their children or their grandchildren gone, without a whole lot of options for recovery—assistance.

We have every intention to rebuild our city and to rebuild our region. Just as if there were an earthquake in San Francisco, I don't think Congress would suggest that the millions of people who live there should simply pick up and move to New York and abandon the city of San Francisco, we have no intention of abandoning the city of New Orleans. We may lie 5 feet below sea level, but let me assure you, there are places in this world that are as or more productive than this region that lie 20 feet below sea level and manage their water properly and invest in their civil works properly in a way we could model ourselves after and do very well.

The city of New Orleans and the State of Louisiana have contributed billions of dollars to the economy of this Nation and to the general fund of

this Nation, and we want to continue to do so. We are not asking for a handout but a hand up. We are not asking for charity. We are asking for a portion of the taxes we pay, a portion of the money we send to the national Government, to be redirected, to give us the security for our coast and our hurricane protection that we warrant and the industries this infrastructure protects warrant for the benefit of not just the 4.5 million people who live in the State of Louisiana, and the 3 million-plus people who live in Mississippi, but which protect and support the almost 300 million people who live in the United States of America.

So these two bills are very important. I look forward to working on them when we get back.

The second bill is a bill where we picked up an idea from the New York situation, 9/11—a terrible situation that is still seared into our memory and our collective conscience.

There were some real problems with housing following the destruction of that neighborhood. This second bill I have introduced would allow FEMA to extend some of their rental and housing programs to give some immediate help to families who find themselves unable to recover their equity for whatever reason out of the houses they have that are uninhabitable but who have to find a decent place to live so they can rebuild and regroup. That bill will address that situation.

Mrs. CLINTON. Mr. President, I rise today to introduce legislation that will help ensure beneficiaries who are eligible for both Medicare and Medicaid, the so-called ''dual-eligibles,'' make a smooth and successful transition from Medicaid prescription drug coverage to Medicare Part D.

The 6.4 million seniors and disabled Americans who are dually eligible are the most vulnerable members of an already vulnerable population. They are the poorest of the elderly, with incomes of less than $10,000 per year. And they are the sickest of the elderly, with approximately 25 percent residing in a long-term care facility. They have significant health care needs, have often been diagnosed with multiple chronic conditions, and are in greatest danger of being affected by poor implementation of Medicare's new prescription drug benefit.

On November 15, beneficiaries began signing up for Medicare Part D prescription drug plans, and on January 1, the drug benefit actually begins. But this date does not only mark the beginning of a new Medicare drug benefit. For the 6.4 million dual eligibles, January 1 is also the day that they stop receiving a Medicaid drug benefit.

I voted against the Medicare bill when it was before the Senate in 2003 and we are all well aware of the many flaws and shortcomings: the insurance company slush fund, the ''donut hole,'' the prohibition on the Government negotiating for lower drug costs and on the safe importation of prescription medications, among others.

But the short timeframe in which dual eligibles have to complete this transition is one of the most worrisome.

There are only 6 weeks between the time when seniors began signing up for the new drug plans, and the date when Medicaid coverage ceases. That means that dual eligibles—the poorest and sickest portion of the Medicare population—have very little time in which to accurately balance the benefits and drawbacks of their prescription drug plan choices.

We're giving most seniors 6 months to consider their options of a prescription drug plan, but we're giving the most vulnerable only 6 weeks.

While it would be my preference that the existence of a Medicaid drug benefit be extended beyond January 1 to provide adequate time for the transition, Republicans in Congress have blocked legislation that would do this, leaving these individuals without coverage if their transition from Medicaid to Medicare doesn't happen before the end of the year.

In response to the concern over the short implementation period, CMS announced that it will automatically enroll dual eligibles in a randomly chosen prescription drug plan by January 1, 2006.

CMS reports that at the end of November they had automatically enrolled over 5 million of the 6.4 million dually eligible beneficiaries in a Medicare Part D plan. But this leaves more than 1 million of our poorest and sickest vulnerable to falling through the cracks if they are not enrolled in a Medicare Part D plan in the next several weeks.

CMS Administrator Mark McClellan has himself said that some dual eligibles may not be auto-enrolled before January 1, when their Medicaid drug benefit ceases to exist. In fact, if CMS is able to auto-enroll 95 percent of all dual eligibles, more than 300,000 would still be left without prescription drug coverage and access to critical medications. At 98 percent enrollment, almost 130,000 would be left without coverage. These are unacceptable numbers.

In light of growing concern that some dual eligible beneficiaries will arrive at their pharmacy counter on January 1 without coverage, CMS has announced a procedure to allow pharmacies to fill the prescription and a contractor to follow up with the beneficiary to facilitate enrollment in a Part D plan.

While I am glad that CMS has taken this step, I am concerned that pharmacies will not be aware of this option and some beneficiaries will still fall through the cracks.

In addition, pharmacies will be charged a transaction fee if they use this procedure and electronically inquire about the status of a beneficiary that comes to their pharmacy counter and isn't sure what coverage they have or if they have coverage at all.

The legislation I am introducing today aims to address this problem. The Medicare Dual Eligible Identification and Enrollment Facilitation Act would require outreach and education to pharmacies, particularly independent pharmacies, and a hold harmless provision for transaction fees that pharmacies incur when they use this procedure.

It is critical that we do everything we can to ensure that our most vulnerable seniors do not fall through the cracks and the pharmacies across the country are now our last line of defense. Helping them help these beneficiaries and eliminating fees they incur for doing so are simple but critical steps we should take to ensure that not a single dual eligible beneficiary is left without prescription drug coverage.

I urge speedy passage of the Medicare Dual Eligible Identification and Enrollment Facilitation Act.

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By Mr. KENNEDY (for himself, Mr. ROCKEFELLER, and Mr. REID):

S. 2175. A bill to require the submittal to Congress of any Presidential Daily Briefing relating to Iraq during the period beginning on January 20, 1997, and ending on March 19, 2003; to the Select Committee on Intelligence.

S. 2175

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

**SECTION 1. SUBMITTAL TO CONGRESS OF CERTAIN PRESIDENTIAL DAILY BRIEFINGS ON IRAQ.**

(a) IN GENERAL.—The Director of National Intelligence shall submit to the congressional intelligence committees any Presidential Daily Briefing (PDB), or any portion of a Presidential Daily Briefing, of the Director of Central Intelligence during the period beginning on January 20, 1997, and ending on March 19, 2003, that refers to Iraq or otherwise addresses Iraq in any fashion.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

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## SUBMITTED RESOLUTIONS

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### SENATE RESOLUTION 342—RECOGNIZING THE REPUBLIC OF CROATIA FOR ITS PROGRESS IN STRENGTHENING DEMOCRATIC INSTITUTIONS, RESPECT FOR HUMAN RIGHTS, AND THE RULE OF LAW AND RECOMMENDING THE INTEGRATION OF CROATIA INTO THE NORTH ATLANTIC TREATY ORGANIZATION

Mr. VOINOVICH (for himself, Mr. HAGEL, and Mr. BIDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 342

Whereas the United States recognized the Republic of Croatia on April 7, 1992, acknowledging the decision of the people of Croatia

to live in an independent, democratic, and sovereign country;

Whereas since achieving their independence, the people of Croatia have dedicated themselves to building a functioning democratic society, based on the rule of law, respect for human rights, and a free market economy;

Whereas Croatia has made progress in judicial reform and has adopted a judicial reform strategy;

Whereas Croatia has demonstrated a desire to protect minority rights and promote a viable multiethnic society;

Whereas, in 2002, Croatia adopted the Constitutional Law on the Rights of National Minorities, ensuring the representation of minorities in the Parliament of Croatia and the establishment of the councils of national minorities;

Whereas the Government of Croatia has concluded specific bilateral agreements on the protection of minority rights with Hungary, Italy, and Serbia and Montenegro and has concluded an agreement on cooperation with representatives of the Independent Democratic Serb Party in the Parliament of Croatia;

Whereas three prominent members of the Parliament of Croatia, Ratko Gajica, Milorad Pupovac, and Vojislav Stanimirovic, who represent the Serb minority, sent a letter to the Assistant to the President for National Security Affairs, Stephen Hadley, expressing their support for the Prime Minister of Croatia, Ivo Sanader, and for Croatia's path toward membership in the European Union and in the North Atlantic Treaty Organization (''NATO'');

Whereas Croatia has shown dedication to advancing the return, reconstruction, and restitution of property in Croatia;

Whereas Croatia has proven to be a reliable partner of the United States in seeking the stabilization of the region;

Whereas Croatia participated in the Iraq International Conference held in Brussels on June 22, 2005, and offered to train and educate nationals of Iraq at universities in Croatia;

Whereas Croatia is taking part in the training of Iraqi security forces at the International Training Center in Jordan and has offered to train additional security personnel for Iraq in Croatia;

Whereas Croatia has been a partner in the war against terrorism, sent troops to Afghanistan as part of the NATO-led International Security Assistance Force in support of the war against terrorism in 2002, and has provided civilians to staff the Provincial Reconstruction Team under the leadership of NATO in Fayzabad;

Whereas, during July 2005, Croatia adopted a decision to triple its military presence in the International Security Assistance Force;

Whereas Croatia has endorsed and is participating in the Proliferation Security Initiative with like-minded nations across the world to prevent the flow of weapons of mass destruction, missile systems, and related material;

Whereas, on June 1, 2005, Croatia was the fourth nation to sign the Proliferation Security Initiative Shipboarding Agreement with the United States to prevent the maritime transfer of dangerous shipments of weapons or other illicit materials to keep such weapons and materials out of the hands of dangerous actors and terrorists;

Whereas, since Croatia has become an independent country, the United States has shown support for Croatia in many ways, including by providing Croatia with economic and military assistance that has contributed significantly to the progress and continued success occurring in Croatia;

Whereas the United States has encouraged Croatia's transformation and the future membership of Croatia in NATO;

Whereas a whole and free Europe cannot be fully achieved without the integration into NATO of all countries that share the common values of democracy, the rule of law, and respect for human rights;

Whereas the Membership Action Plan developed for NATO, which was launched in April 1999, is a program of assistance that provides both goals and a roadmap for countries aspiring to membership in NATO;

Whereas Croatia was invited into the Membership Action Plan in May 2002 and has made substantial progress toward the achievement of the reforms required for receiving an invitation to start accession talks with NATO;

Whereas the United States, Croatia, Albania, and Macedonia are signatories to the United States-Adriatic Charter for Partnership, which promotes Euro-Atlantic integration and commits the signatory nations to the values and principles of NATO and to membership in NATO at the earliest possible time;

Whereas Croatia supports regional cooperation as a means of bringing stability to Europe, particularly Southeast Europe, and has cooperated with the countries that neighbor Croatia to promote such stability, including providing technical and other assistance to countries that seek membership in the European Union;

Whereas, on October 3, 2005, the European Union decided to open accession negotiations with Croatia based on the assessment of the European Union's Council of Ministers that Croatia met the political and economic criteria for candidacy in the European Union, including that Croatia was fully cooperating with the International Criminal Tribunal for the former Yugoslavia;

Whereas the cooperation between the Government of Croatia and the Tribunal improved significantly under Prime Minister Ivo Sanader;

Whereas, since November 2003, Croatia has handed over to the Tribunal eleven individuals indicted for war crimes;

Whereas the cooperation of the Government of Croatia with the Tribunal assisted in the arrest of Ante Gotovina on December 8, 2005, in Spain and his transfer to the Tribunal on December 10, 2005;

Whereas the success of the Government of Croatia in bringing war criminals to justice demonstrates the commitment of the Government to move Croatia toward a brighter future of peace, stability, and prosperity for its people; and

Whereas Croatia shares the common interests and values of the free and democratic world: Now, therefore, be it

*Resolved,* That—

(1) since the Republic of Croatia became an independent country, the Government and people of Croatia have made significant progress in strengthening democratic institutions, respect for human rights, and the rule of law in Croatia;

(2) Croatia's membership in the North Atlantic Treaty Organization (''NATO'') would contribute to stability in Southeast Europe;

(3) it is the sense of the Senate that—

(A) the Government and people of Croatia should be commended for their progress on protecting minority rights in Croatia, progress toward achieving the political, economic, military, and other requirements of NATO's Membership Action Plan, contribution to the International Security Assistance Force and the war against terrorism, and for their constructive participation the Proliferation Security Initiative and in the United States-Adriatic Charter;

(B) the Government of Croatia should be commended for its cooperation with the International Criminal Tribunal for the former Yugoslavia which led to the apprehension and transfer of several individuals indicted for war crimes, including Ante Gotovina, to the Tribunal;

(C) the Government of Croatia should continue its cooperation with the Tribunal;

(D) the Government of Croatia should continue and strengthen its role as a partner on nonproliferation and its support in the war against terrorism and in Iraq;

(E) the Government of Croatia should continue its efforts to implement defense reforms; and

(F) the Government of the United States should continue and increase its defense and security cooperation with the Government of Croatia, including through education, training, and technical cooperation, to assist Croatia in the reform process and in fulfilling its requirements for membership in NATO; and

(4) upon complete satisfaction of the criteria for NATO membership, in accordance with NATO's guidelines, Croatia should be invited to be a full member of NATO at the earliest possible date.

## SENATE RESOLUTION 343—EXPRESSING THE SENSE OF THE SENATE THAT THE WEEK OF DECEMBER 19, 2005 SHOULD BE DESIGNATED ''THANK OUR DEFENDERS WEEK''

Mr. SESSIONS submitted the following resolution; which was considered and agreed to:

S. RES. 343

Whereas, ever since our Nation was founded, the members of our military, Soldiers, Sailors, Airmen, Marines, Coast Guard personnel, active duty, Guard, and reserve, have played a critical role protecting America's vital interests and spreading peace throughout the world;

Whereas, more than 193,000 troops in the Persian Gulf region are courageously fighting insurgents and helping to establish democracies in Iraq and Afghanistan;

Whereas, 19,000 servicemen and servicewomen are stationed in Afghanistan, fighting Al-Qaeda and providing security for the people of that fledgling nation;

Whereas, over 30,000 troops are protecting American interests and maintaining peace on the Korean peninsula;

Whereas, in total, nearly 300,000 brave men and women are actively serving on the soil of 120 foreign countries and on the High Seas, fighting terrorists and making sacrifices for American citizens and families; and

Whereas, thanks to their tireless efforts, a brutal dictatorship in Iraq and an oppressive regime in Afghanistan have given way to emerging democratic societies: Now, therefore, be it

*Resolved,* That with gratitude it is the sense of the Senate that the week of December 19, 2005 should be designated ''Thank Our Defenders Week.''

## SENATE RESOLUTION 344—EXPRESSING SUPPORT FOR THE GOVERNMENT OF GEORGIA'S SOUTH OSSETIAN PEACE PLAN AND THE SUCCESSFUL AND PEACEFUL REINTEGRATION OF THE REGION INTO GEORGIA

Mr. MCCAIN (for himself, Mr. LUGAR, Mr. BROWNBACK, and Mr. REID) submitted the following resolution; which was considered and agreed to:

S. RES. 344

Whereas during December 1991, Georgia was internationally recognized as an independent and sovereign country following the formal dissolution of the Union of Soviet Socialist Republics;

Whereas the United States supports the independence, sovereignty, territorial integrity, and ongoing democratic reform process in Georgia;

Whereas the United States reaffirms its support for the peaceful resolution of the conflict in Adjura and the restoration of democracy and political stability in that region of Georgia;

Whereas as a result of a conflict from 1991 to 1992, a separatist regime has enforced its rule in the Georgia territory of South Ossetia, impoverishing the people living in South Ossetia, militarizing the area, allowing organized crime to flourish, and posing a threat to the peace and security in the region;

Whereas the Government of Georgia has announced a peace plan to reach a full political settlement to the South Ossetian conflict;

Whereas the Government of Georgia has acknowledged that mistakes were made in its past efforts in dealing with the region of South Ossetia;

Whereas at the 59th meeting of the United Nations General Assembly, Georgian President Mikhail Saakashvili outlined specific components of a peace initiative that includes demilitarization, confidence building measures, and economic, social, cultural, and political steps to protect the South Ossetian people and their rights while reintegrating the region, with significant autonomy, into Georgia;

Whereas President Saakashvili reaffirmed the main principles of the peace agreement at the Parliamentary Assembly Council of Europe in January, 2005, held in Strasbourg, France;

Whereas a formal comprehensive peace proposal based on the Strasbourg principles was formally proposed on October 27, 2005, at the Organization for Security and Co-operation in Europe; and

Whereas on December 6, 2005, at their 13th Ministerial Council Meeting in Ljubljana, Slovenia, the Organization for Security and Co-operation in Europe endorsed the Government of Georgia's peace plan, stating, ''We welcome the steps taken by the Georgian side to address the peaceful resolution of the conflict and believe that the recent proposals, in particular the Peace Plan built upon the initiatives of the President of Georgia presented at the 59th United Nations General Assembly and supported by the sides, will serve as a basis for the peaceful settlement of the conflict'': Now, therefore, be it

*Resolved*, That the Senate—

(1) commends the Government of Georgia for its vision and determination in its efforts to resolve peacefully the conflict in South Ossetia;

(2) supports the sovereignty, independence, and territorial integrity of the democratic Government of Georgia;

(3) urges all Organization for Security and Co-operation in Europe participating States to respect fully the independence, sovereignty, territorial integrity of Georgia, refraining from any acts constituting a threat of or use of force, direct or indirect, and abiding by the principle of the inviolability of frontiers;

(4) expresses its support for the Government of Georgia's plan to control peacefully and reestablish authority in the region of South Ossetia, viewing it as an opportunity to restore the territorial integrity of the country and to protect the individual rights and democratic liberties of those living in South Ossetia;

(5) urges the United States to increase its efforts in support of the peaceful reincorporation of South Ossetia to Georgia, including efforts to support the greater involvement of the international community, including the Russian Federation, the Organization for Security and Cooperation in Europe, the European Union, and international organizations in the peaceful settlement of the South Ossetian conflict; and

(6) supports the ongoing democratic transformation in Georgia and will continue to monitor closely the peace process in South Ossetia, including the implementation by all sides of their obligations under the peace plan if it is accepted.

## SENATE RESOLUTION 345—RECOGNIZING THE 100TH ANNIVERSARY OF FENTON ART GLASS, A BELOVED INSTITUTION IN WEST VIRGINIA, THAT CONTINUES TO CONTRIBUTE TO THE ECONOMIC AND CULTURAL HERITAGE OF THE STATE THROUGH ITS PRODUCTION OF WORLD RENOWNED, HAND-BLOWN GLASS

Mr. BYRD (for himself and Mr. ROCKEFELLER) submitted the following resolution; which was considered and agreed to:

S. RES. 345

Whereas Fenton Art Glass rose from its humble beginnings as a glass decorating company in 1905, and came to settle in Williamstown, West Virginia, by opening a factory to create their own glass when they were unable to obtain the glass that they needed;

Whereas, with the vision of brothers Frank and John Fenton, Fenton Art Glass began to create innovative new colors and established the company in the forefront of the hand-blown glass industry;

Whereas in 1907, Fenton introduced its highly colorful Iridescent, or ''Carnival'' Glass, which became instantly successful throughout the country and is now highly prized by collectors around the world;

Whereas during the 1930s and 1940s, Fenton addressed the shortages felt by families in the United States by producing mixing bowls and tableware that were often unavailable during the World War II and Depression shortages;

Whereas Fenton Art Glass is not only a family tradition, with the third generation of the Fenton family now carrying on the legacy, but also a West Virginia institution, employing generations of workers; and

Whereas Fenton Glass, known for its beauty and precision in craftsmanship, is a symbol of the dedication and care of the Fenton family, as well as the pride in craftsmanship so characteristic of the West Virginia people: Now, therefore, be it

*Resolved*, That the Senate congratulates Fenton Art Glass on its centennial milestone, for creating beautiful, hand-blown glass in West Virginia for 100 years. a for 100 years.

## SENATE RESOLUTION 346—COMMENDING THE APPALACHIAN STATE UNIVERSITY FOOTBALL TEAM FOR WINNING THE 2005 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DIVISION I–AA FOOTBALL CHAMPIONSHIP.

Mr. BURR (for himself and Mrs. DOLE) submitted the following resolution; which was submitted and read:

S. RES. 346

Whereas on December 16, 2005, the Appalachian State Mountaineers defeated the Northern Iowa Panthers in the Championship game of the National Collegiate Athletic Association (''NCAA'') Division I–AA Football Tournament in Chattanooga, Tennessee;

Whereas the Mountaineers are the first team from Appalachian State to win a NCAA Championship in school history;

Whereas Appalachian State is the first university in the State of North Carolina to win a NCAA football championship;

Whereas head coach Jerry Moore, the all-time winningest coach in Southern Conference history, won his first NCAA title in his seventeenth year as head coach of the Mountaineers, improving to 140–67 his record as head coach at Appalachian State;

Whereas defensive ends Marques Murrell and Jason Hunter, as well as safety Corey Lynch, were named to the I–AA All America team;

Whereas junior defensive end Marques Murrell, who finished the game with 9 tackles and forced a fumble with 9 minutes, 14 seconds remaining in the game, and senior Jason Hunter, who finished the game with ten tackles, returned it for the winning touchdown;

Whereas injured senior quarterback and Southern Conference Offensive Player of the Year Richie Williams courageously led the Mountaineers in the second half while playing with an injured ankle tendon;

Whereas the Mountaineer defense held the Panthers scoreless in the second half;

Whereas backup quarterback Trey Elder led Appalachian State to a 29–23 victory over Furman University to earn a spot in the final contest;

Whereas the Mountaineers defeated Lehigh University and Southern Illinois to advance to the I–AA ''Final Four'';

Whereas the Mountaineer team members are excellent representatives of a fine university that is a leader in higher education, producing many fine student-athletes and other leaders;

Whereas each player, coach, trainer, manager, and staff member dedicated this season and their efforts to ensure the Appalachian State University Mountaineers reached the summit of college football;

Whereas the Mountaineers showed tremendous dedication to each other, appreciation to their fans, sportsmanship to their opponents, and respect for the game of football throughout the 2005 season; and

Whereas residents of the Old North State and Appalachian fans worldwide are to be commended for their long-standing support, perseverance, and pride in the team: Now, therefore, be it

*Resolved*, That the Senate—

(1) commends the champion Appalachian State University Mountaineers for their historic win in the 2005 National Collegiate Athletic Association Division I–AA Football Championship;

(2) recognizes the achievements of the players, coaches, students, alumni, and support staff who were instrumental in helping Appalachian State University win the championship; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to Appalachian State University Chancellor Kenneth Peacock and head coach Jerry Moore for appropriate display.

## SENATE RESOLUTION 347—EXPRESSING THE SENSE OF THE SENATE THAT LENDERS HOLDING MORTGAGES ON HOMES IN COMMUNITIES OF THE GULF COAST DEVASTATED BY HURRICANES KATRINA AND RITA SHOULD EXTEND CURRENT VOLUNTARY MORTGAGE PAYMENT FORBEARANCE PERIODS AND NOT FORECLOSE ON PROPERTIES IN THOSE COMMUNITIES

Ms. LANDRIEU (for herself and Mr. VITTER) submitted the following resolution; which was submitted and read:

S. RES. 347

Whereas the Gulf Coast of the United States has experienced 1 of the worst hurricane seasons on record;

Whereas Hurricane Katrina and multiple levee breaks destroyed an estimated 275,000 homes in the Gulf Coast;

Whereas 20,664 businesses in the Gulf Coast sustained catastrophic damage from Hurricane Katrina and Hurricane Rita;

Whereas, according to the Bureau of Economic Analysis at the Department of Commerce, personal income has fallen more than 25 percent in Louisiana in the third quarter of 2005;

Whereas, in the time since Hurricanes Katrina, Rita, and Wilma, the Small Business Administration has only approved 20 percent of disaster loan applications for homeowners in the Gulf Coast and has a backlog of more than 176,000 applications for this assistance as of December 21, 2005;

Whereas, of the 20,741 homeowner disaster loan applications that have been approved in the Gulf Coast by the Small Business Administration, only 1,444 have been fully disbursed;

Whereas, in response to these circumstances, commercial banks, mortgage banks, credit unions, and other mortgage lenders voluntarily instituted 90-day loan forbearance periods after Hurricane Katrina and did not require home owners in the Gulf Coast to make mortgage payments until on or about December 1, 2005;

Whereas, after the termination of the 90-day forbearance period, many home and business owners have received notice from their lenders that they face foreclosure unless they make a lump sum balloon payment in the amount of the mortgage payments previously subject to forbearance; and

Whereas foreclosure on homes and businesses in the Gulf Coast will have a detrimental impact on the economy of the area, will deprive property owners of their equity at a time when they can least afford it, and will have a negative impact on lenders who will be holding properties that may not be readily marketable on the open market: Now, therefore, be it

*Resolved,* That it is the sense of the Senate that—

(1) Congress should act early in the second session of the 109th Congress to consider legislation to provide relief to homeowners in the Gulf Coast; and

(2) commercial banks, mortgage banks, credit unions, and other mortgage lenders should extend mortgage payment forbearance to March 31, 2006, in order to allow Congress the time to consider such legislation.

## SENATE CONCURRENT RESOLUTION 74—CORRECTING THE ENROLLMENT OF H.R. 2863

Ms. CANTWELL submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 74

*Resolved in the Senate (the House of Representatives Concurring), That,* in the enrollment of the bill (H.R. 2863) making appropriations for the Departments of Defense for the fiscal year ending September 30, 2006, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

Strike Division C, the American Energy Independence and Security Act of 2005 and Division D, the Distribution of Revenues and Disaster Assistance.

## SENATE CONCURRENT RESOLUTION 75—ENCOURAGING ALL AMERICANS TO INCREASE THEIR CHARITABLE GIVING, WITH THE GOAL OF INCREASING THE ANNUAL AMOUNT OF CHARITABLE GIVING IN THE UNITED STATES BY 1 PERCENT

Mr. SANTORUM (for himself and Mr. LIEBERMAN) submitted the following concurrent resolution; which was submitted and read:

S. CON. RES. 75

Whereas individual charitable giving rates among Americans have stagnated at 1.5 to 2.2 percent of aggregate individual income for the past 50 years; .

Whereas a 1 percent increase (from 2 percent to 3 percent) in charitable giving will generate over $90,000,000,000 to charity; Whereas charitable giving is a significant source of funding for health, education, and welfare programs; and

Whereas a 1 percent increase in charitable giving would provide some of the funds that will allow the nation to meet our health, education and welfare goals. Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That Congress encourages all Americans to increase their charitable giving, with the goal of increasing the annual amount of charitable giving in the United States by 1 percent.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 2691. Mr. CONRAD proposed an amendment to the bill S. 1932, to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

SA 2692. Mr. FRIST (for Mrs. FEINSTEIN (for herself and Mr. BROWNBACK)) proposed an amendment to the bill S. 119, to provide for the protection of unaccompanied alien children, and for other purposes.

SA 2693. Mr. FRIST (for Mr. LUGAR) proposed an amendment to the bill S. 1315, to require a report on progress toward the Millennium Development Goals, and for other purposes.

SA 2694. Mr. FRIST (for Mr. CRAIG (for himself and Mr. AKAKA)) proposed an amendment to the bill S. 1182, to amend title 38, United States Code, to improve health care for veterans, and for other purposes.

SA 2695. Mr. FRIST (for Mr. STEVENS) proposed an amendment to the bill H.R. 1400, to amend title 18, United States Code, to provide penalties for aiming laser pointers at airplanes, and for other purposes.

## TEXT OF AMENDMENTS

**SA 2691.** Mr. CONRAD proposed an amendment to the bill S. 1932, to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95); as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Deficit Reduction Act of 2005''.

**SEC. 2. TABLE OF TITLES.**

The table of titles is as follows:

TITLE I—AGRICULTURE PROVISIONS

TITLE II—HOUSING AND DEPOSIT INSURANCE PROVISIONS

TITLE III—DIGITAL TELEVISION TRANSITION AND PUBLIC SAFETY

TITLE IV—TRANSPORTATION PROVISIONS

TITLE V—MEDICARE

TITLE VI—MEDICAID AND SCHIP

TITLE VII—HUMAN RESOURCES AND OTHER PROVISIONS

TITLE VIII—EDUCATION AND PENSION BENEFIT PROVISIONS

TITLE IX—LIHEAP PROVISIONS

TITLE X—JUDICIARY RELATED PROVISIONS

**TITLE I—AGRICULTURE PROVISIONS**

**SECTION 1001. SHORT TITLE.**

This title may be cited as the ''Agricultural Reconciliation Act of 2005''.

**Subtitle A—Commodity Programs**

**SEC. 1101. NATIONAL DAIRY MARKET LOSS PAYMENTS.**

(a) AMOUNT.—Section 1502(c) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7982(c)) is amended by striking paragraph (3) and inserting the following new paragraph:

''(3)(A) during the period beginning on the first day of the month the producers on a dairy farm enter into a contract under this section and ending on September 30, 2005, 45 percent;

''(B) during the period beginning on October 1, 2005, and ending on August 31, 2007, 34 percent; and

''(C) during the period beginning on September 1, 2007, 0 percent.''.

(b) DURATION.—Section 1502 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7982) is amended by striking ''2005'' each place it appears in subsections (f) and (g)(1) and inserting ''2007''.

(c) CONFORMING AMENDMENTS.—Section 1502 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7982) is amended—

(1) in subsection (g)(1), by striking ''and subsection (h)''; and

(2) by striking subsection (h).

**SEC. 1102. ADVANCE DIRECT PAYMENTS.**

(a) COVERED COMMODITIES.—Section 1103(d)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7913(d)(2)) is amended in the first sentence by striking ''2007 crop years'' and inserting ''2005 crop years, up to 40 percent of the direct payment for a covered commodity for the 2006 crop year, and up to 22 percent of the direct payment for a covered commodity for the 2007 crop year,''.

(b) PEANUTS.—Section 1303(e)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7953(e)(2)) is amended in the first sentence by striking ''2007 crop years'' and inserting ''2005 crop years, up to 40 percent of the direct payment for the 2006 crop year, and up to 22 percent of the direct payment for the 2007 crop year,''.

**SEC. 1103. COTTON COMPETITIVENESS PROVISIONS.**

(a) REPEAL OF AUTHORITY TO ISSUE COTTON USER MARKETING CERTIFICATES.—Section 1207 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7937) is amended—

(1) by striking subsection (a); and

(2) in subsection (b)(1)—

(A) in subparagraph (B), by striking '', adjusted for the value of any certificate issued under subsection (a),''; and

(B) in subparagraph (C), by striking '', for the value of any certificates issued under subsection (a)''.

(b) EFFECTIVE DATE.—The amendments made by this section take effect on August 1, 2006.

**Subtitle B—Conservation**

**SEC. 1201. WATERSHED REHABILITATION PROGRAM.**

The authority to obligate funds previously made available under section 14(h)(1) of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012(h)(1)) for a fiscal year and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

**SEC. 1202. CONSERVATION SECURITY PROGRAM.**

(a) EXTENSION.—Section 1238A(a) of the Food Security Act of 1985 (16 U.S.C. 3838a(a)) is amended by striking ''2007'' and inserting ''2011''.

(b) FUNDING.—Section 1241(a)(3) of the Food Security Act of 1985 (16 U.S.C. 3841(a)(3)) is amended by striking ''not more than $6,037,000,000'' and all that follows through ''2014.'' and inserting the following: ''not more than—

''(A) $1,954,000,000 for the period of fiscal years 2006 through 2010; and

''(B) $5,650,000,000 for the period of fiscal years 2006 through 2015.''.

**SEC. 1203. ENVIRONMENTAL QUALITY INCENTIVES PROGRAM.**

(a) EXTENSION.—Section 1240B(a)(1) of the Food Security Act of 1985 (16 U.S.C. 3839aa–2(a)(1)) is amended by striking ''2007'' and inserting ''2010''.

(b) LIMITATION ON PAYMENTS.—Section 1240G of the Food Security Act of 1985 (16 U.S.C. 3839aa–7) is amended by striking ''the period of fiscal years 2002 through 2007'' and inserting ''any six-year period''.

(c) FUNDING.—Section 1241(a)(6) of the Food Security Act of 1985 (16 U.S.C. 3841(a)(6)) is amended—

(1) by striking ''and'' at the end of subparagraph (D); and

(2) by striking subparagraph (E) and inserting the following new subparagraphs:

''(E) $1,270,000,000 in each of fiscal years 2007 through 2009; and

''(F) $1,300,000,000 in fiscal year 2010.''.

**Subtitle C—Energy**

**SEC. 1301. RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS PROGRAM.**

Section 9006(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106(f)) is amended by striking ''2007'' and inserting ''2006 and $3,000,000 for fiscal year 2007''.

**Subtitle D—Rural Development**

**SEC. 1401. ENHANCED ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS.**

The authority to obligate funds previously made available under section 601(j)(1) of the Rural Electrification Act of 1936 for a fiscal year and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

**SEC. 1402. VALUE-ADDED AGRICULTURAL PRODUCT MARKET DEVELOPMENT GRANTS.**

The authority to obligate funds previously made available under section 231(b)(4) of the Agricultural Risk Protection Act of 2000 (Public Law 106–224; 7 U.S.C. 1621 note) for a fiscal year and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

**SEC. 1403. RURAL BUSINESS INVESTMENT PROGRAM.**

(a) TERMINATION OF FISCAL YEAR 2007 AND SUBSEQUENT FUNDING.—Subsection (a)(1) of section 384S of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009cc–18) is amended by inserting after ''necessary'' the following: ''through fiscal year 2006''.

(b) CANCELLATION OF UNOBLIGATED PRIOR-YEAR FUNDS.—The authority to obligate funds previously made available under such section and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

**SEC. 1404. RURAL BUSINESS STRATEGIC INVESTMENT GRANTS.**

The authority to obligate funds previously made available under section 385E of the Consolidated Farm and Rural Development Act and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

**SEC. 1405. RURAL FIREFIGHTERS AND EMERGENCY PERSONNEL GRANTS.**

(a) TERMINATION OF FISCAL YEAR 2007 FUNDING.—Subsection (c) of section 6405 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 2655) is amended by striking ''2007'' and inserting ''2006''.

(b) CANCELLATION OF UNOBLIGATED PRIOR-YEAR FUNDS.—The authority to obligate funds previously made available under such section for a fiscal year and unobligated as of October 1, 2006, is hereby cancelled effective on that date.

**Subtitle E—Research**

SEC. 1501. INITIATIVE FOR FUTURE FOOD AND AGRICULTURE SYSTEMS.

(a) TERMINATION OF FISCAL YEAR 2007, 2008, AND 2009 TRANSFERS.—Subsection (b)(3)(D) of section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7621) is amended by striking ''2006'' and inserting ''2009''.

(b) TERMINATION OF MULTI-YEAR AVAILABILITY OF FISCAL YEAR 2006 FUNDS.—Paragraph (6) of subsection (f) of such section is amended to read as follows:

''(6) AVAILABILITY OF FUNDS.—

''(A) TWO-YEAR AVAILABILITY.—Except as provided in subparagraph (B), funds for grants under this section shall be available to the Secretary for obligation for a 2-year period beginning on the date of the transfer of the funds under subsection (b).

''(B) EXCEPTION FOR FISCAL YEAR 2006 TRANSFER.—In the case of the funds required to be transferred by subsection (b)(3)(C), the funds shall be available to the Secretary for obligation for the 1-year period beginning on October 1, 2005.''.

**TITLE II—HOUSING AND DEPOSIT INSURANCE PROVISIONS**

**Subtitle A—FHA Asset Disposition**

**SEC. 2001. DEFINITIONS.**

For purposes of this subtitle, the following definitions shall apply:

(1) The term ''affordability requirements'' means any requirements or restrictions imposed by the Secretary, at the time of sale, on a multifamily real property or a multifamily loan, such as use restrictions, rent restrictions, and rehabilitation requirements.

(2) The term ''discount sale'' means the sale of a multifamily real property in a transaction, such as a negotiated sale, in which the sale price is lower than the property market value and is set outside of a competitive bidding process that has no affordability requirements.

(3) The term ''discount loan sale'' means the sale of a multifamily loan in a transaction, such as a negotiated sale, in which the sale price is lower than the loan market value and is set outside of a competitive bidding process that has no affordability requirements.

(4) The term ''loan market value'' means the value of a multifamily loan, without taking into account any affordability requirements.

(5) The term ''multifamily real property'' means any rental or cooperative housing project of 5 or more units owned by the Secretary that prior to acquisition by the Secretary was security for a loan or loans insured under title II of the National Housing Act.

(6) The term ''multifamily loan'' means a loan held by the Secretary and secured by a multifamily rental or cooperative housing project of 5 or more units that was formerly insured under title II of the National Housing Act.

(7) The term ''property market value'' means the value of a multifamily real property for its current use, without taking into account any affordability requirements.

(8) The term ''Secretary'' means the Secretary of Housing and Urban Development.

**SEC. 2002. APPROPRIATED FUNDS REQUIREMENT FOR BELOW-MARKET SALES.**

(a) DISCOUNT SALES.—Notwithstanding any other provision of law, except for affordability requirements for the elderly and disabled required by statute, disposition by the Secretary of a multifamily real property during fiscal years 2006 through 2010 through a discount sale under sections 207(l) or 246 of the National Housing Act (12 U.S.C. 1713(l), 1715z–11), section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11), or section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z–11a), shall be subject to the availability of appropriations to the extent that the property market value exceeds the sale proceeds. If the multifamily real property is sold, during such fiscal years, for an amount equal to or greater than the property market value then the transaction is not subject to the availability of appropriations.

(b) DISCOUNT LOAN SALES.—Notwithstanding any other provision of law and in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), a discount loan sale during fiscal years 2006 through 2010 under section 207(k) of the National Housing Act (12 U.S.C. 1713(k)), section 203(k) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(k)), or section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z–11a(a)), shall be subject to the availability of appropriations to the extent that the loan market

alue exceeds the sale proceeds. If the multifamily loan is sold, during such fiscal years, for an amount equal to or greater than the loan market value then the transaction is not subject to the availability of appropriations.

(c) APPLICABILITY.—This section shall not apply to any transaction that formally commences within one year prior to the enactment of this section.

**SEC. 2003. UP–FRONT GRANTS.**

(a) 1997 ACT.—Section 204(a) of the Departments of Veterans Affairs and Housing And Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z–11a(a))) is amended by adding at the end the following new sentence: ''A grant provided under this subsection during fiscal years 2006 through 2010 shall be available only to the extent that appropriations are made in advance for such purposes and shall not be derived from the General Insurance Fund.''.

(b) 1978 ACT.—Section 203(f)(4) of the Housing and Community Development Amendments of 1978 (12 USC 1701z–11(f)(4)) is amended by adding at the end the following new sentence: ''This paragraph shall be effective during fiscal years 2006 through 2010 only to the extent that such budget authority is made available for use under this paragraph in advance in appropriation Acts.''.

(c) APPLICABILITY.—The amendments made by this section shall not apply to any transaction that formally commences within one year prior to the enactment of this section.

**Subtitle B—Deposit Insurance**

**SEC. 2101. SHORT TITLE.**

This subtitle may be cited as the ''Federal Deposit Insurance Reform Act of 2005''.

**SEC. 2102. MERGING THE BIF AND SAIF.**

(a) IN GENERAL.—

(1) MERGER.—The Bank Insurance Fund and the Savings Association Insurance Fund shall be merged into the Deposit Insurance Fund.

(2) DISPOSITION OF ASSETS AND LIABILITIES.—All assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund shall be transferred to the Deposit Insurance Fund.

(3) NO SEPARATE EXISTENCE.—The separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund shall cease on the effective date of the merger thereof under this section.

(b) REPEAL OF OUTDATED MERGER PROVISION.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is repealed.

(c) EFFECTIVE DATE.—This section shall take effect no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning on the date of the enactment of this Act.

**SEC. 2103. INCREASE IN DEPOSIT INSURANCE COVERAGE.**

(a) IN GENERAL.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended—

(1) by striking subparagraph (B) and inserting the following new subparagraph:

''(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).''; and

(2) by adding at the end the following new subparagraphs:

''(E) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.—For purposes of this Act, the term 'standard maximum deposit insurance amount' means $100,000, adjusted as provided under subparagraph (F) after March 31, 2010.

''(F) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—By April 1 of 2010, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly consider the factors set forth under clause (v), and, upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 207(k) of the Federal Credit Union Act) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

''(I) $100,000; and

''(II) the ratio of the published annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this clause, to the published annual value of such index for the calendar year preceding the date this subparagraph takes effect under the Federal Deposit Insurance Reform Act of 2005.

The values used in the calculation under subclause (II) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

''(ii) ROUNDING.—If the amount determined under clause (ii) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

''(iii) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

''(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 207(k)(3) of the Federal Credit Union Act, as so calculated; and

''(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

''(iv) 6-MONTH IMPLEMENTATION PERIOD.—Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

''(v) INFLATION ADJUSTMENT CONSIDERATION.—In making any determination under clause (i) to increase the standard maximum deposit insurance amount and the standard maximum share insurance amount, the Board of Directors and the National Credit Union Administration Board shall jointly consider—

''(I) the overall state of the Deposit Insurance Fund and the economic conditions affecting insured depository institutions;

''(II) potential problems affecting insured depository institutions; or

''(III) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits.''.

(b) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—Section 11(a)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(D)) is amended to read as follows:

''(D) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—

''(i) PASS-THROUGH INSURANCE.—The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

''(ii) PROHIBITION ON ACCEPTANCE OF BENEFIT PLAN DEPOSITS.—An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

''(iii) DEFINITIONS.—For purposes of this subparagraph, the following definitions shall apply:

''(I) CAPITAL STANDARDS.—The terms 'well capitalized' and 'adequately capitalized' have the same meanings as in section 38.

''(II) EMPLOYEE BENEFIT PLAN.—The term 'employee benefit plan' has the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

''(III) PASS-THROUGH DEPOSIT INSURANCE.—The term 'pass-through deposit insurance' means, with respect to an employee benefit plan, deposit insurance coverage based on the interest of each participant, in accordance with regulations issued by the Corporation.''.

(c) INCREASED AMOUNT OF DEPOSIT INSURANCE FOR CERTAIN RETIREMENT ACCOUNTS.—Section 11(a)(3)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(3)(A)) is amended by striking ''$100,000'' and inserting ''$250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that $250,000 shall be substituted for $100,000 wherever such term appears in such paragraph)''.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date the final regulations required under section 9(a)(2) take effect.

**SEC. 2104. SETTING ASSESSMENTS AND REPEAL OF SPECIAL RULES RELATING TO MINIMUM ASSESSMENTS AND FREE DEPOSIT INSURANCE.**

(a) SETTING ASSESSMENTS.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(1) by striking subparagraphs (A) and (B) and inserting the following new subparagraphs:

''(A) IN GENERAL.—The Board of Directors shall set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph (D).

''(B) FACTORS TO BE CONSIDERED.—In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

''(i) The estimated operating expenses of the Deposit Insurance Fund.

''(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

''(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

''(iv) The risk factors and other factors taken into account pursuant to paragraph (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

''(v) Any other factors the Board of Directors may determine to be appropriate.''; and

(2) by inserting after subparagraph (C) the following new subparagraph:

''(D) NO DISCRIMINATION BASED ON SIZE.—No insured depository institution shall be barred from the lowest-risk category solely because of size.''.

(b) ASSESSMENT RECORDKEEPING PERIOD SHORTENED.—Paragraph (5) of section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended to read as follows:

''(5) DEPOSITORY INSTITUTION REQUIRED TO MAINTAIN ASSESSMENT-RELATED RECORDS.—

Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of—

''(A) the end of the 3-year period beginning on the due date of the assessment; or

''(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.''.

(c) INCREASE IN FEES FOR LATE ASSESSMENT PAYMENTS.—Subsection (h) of section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828(h)) is amended to read as follows:

''(h) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—

''(1) IN GENERAL.—Subject to paragraph (3), any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

''(2) EXCEPTION IN CASE OF DISPUTE.—Paragraph (1) shall not apply if—

''(A) the failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

''(B) the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

''(3) SPECIAL RULE FOR SMALL ASSESSMENT AMOUNTS.—If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (1) shall not exceed $100 for each day that such violation continues.

''(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (1) upon a finding that good cause prevented the timely payment of an assessment.''.

(d) STATUTE OF LIMITATIONS FOR ASSESSMENT ACTIONS.—Subsection (g) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(g)) is amended to read as follows:

''(g) ASSESSMENT ACTIONS.—

''(1) IN GENERAL.—The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any insured depository institution the amount of any unpaid assessment lawfully payable by such insured depository institution.

''(2) STATUTE OF LIMITATIONS.—The following provisions shall apply to actions relating to assessments, notwithstanding any other provision in Federal law, or the law of any State:

''(A) Any action by an insured depository institution to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exception in subparagraph (E).

''(B) Any action by the Corporation to recover from an insured depository institution the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exceptions in subparagraphs (C) and (E).

''(C) If an insured depository institution has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

''(D) Except as provided in subparagraph (C), assessment deposit information contained in records no longer required to be maintained pursuant to subsection (b)(4) shall be considered conclusive and not subject to change.

''(E) Any action for the underpaid or overpaid amount of any assessment that became due before the amendment to this subsection under the Federal Deposit Insurance Reform Act of 2005 took effect shall be subject to the statute of limitations for assessments in effect at the time the assessment became due.''.

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date that the final regulations required under section 9(a)(5) take effect.

**SEC. 2105. REPLACEMENT OF FIXED DESIGNATED RESERVE RATIO WITH RESERVE RANGE.**

(a) IN GENERAL.—Section 7(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)) is amended to read as follows:

''(3) DESIGNATED RESERVE RATIO.—

''(A) ESTABLISHMENT.—

''(i) IN GENERAL.—Before the beginning of each calendar year, the Board of Directors shall designate the reserve ratio applicable with respect to the Deposit Insurance Fund and publish the reserve ratio so designated.

''(ii) RULEMAKING REQUIREMENT.—Any change to the designated reserve ratio shall be made by the Board of Directors by regulation after notice and opportunity for comment.

''(B) RANGE.—The reserve ratio designated by the Board of Directors for any year—

''(i) may not exceed 1.5 percent of estimated insured deposits; and

''(ii) may not be less than 1.15 percent of estimated insured deposits.

''(C) FACTORS.—In designating a reserve ratio for any year, the Board of Directors shall—

''(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

''(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

''(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

''(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

''(D) PUBLICATION OF PROPOSED CHANGE IN RATIO.—In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published proposal a thorough analysis of the data and projections on which the proposal is based.''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date that the final regulations required under section 9(a)(1) take effect.

**SEC. 2106. REQUIREMENTS APPLICABLE TO THE RISK-BASED ASSESSMENT SYSTEM.**

Section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) is amended by adding at the end the following new subparagraphs:

''(E) INFORMATION CONCERNING RISK OF LOSS AND ECONOMIC CONDITIONS.—

''(i) SOURCES OF INFORMATION.—For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, such as reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from credit rating entities, and other private economic or business analysts.

''(ii) CONSULTATION WITH FEDERAL BANKING AGENCIES.—

''(I) IN GENERAL.—Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

''(II) TREATMENT ON AGGREGATE BASIS.—In the case of insured depository institutions that are well capitalized (as defined in section 38) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

''(iii) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation.

''(F) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT.—In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.''.

**SEC. 2107. REFUNDS, DIVIDENDS, AND CREDITS FROM DEPOSIT INSURANCE FUND.**

(a) IN GENERAL.—Subsection (e) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)) is amended to read as follows:

''(e) REFUNDS, DIVIDENDS, AND CREDITS.—

''(1) REFUNDS OF OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

''(A) refund the amount of the excess payment to the insured depository institution; or

''(B) credit such excess amount toward the payment of subsequent assessments until such credit is exhausted.

''(2) DIVIDENDS FROM EXCESS AMOUNTS IN DEPOSIT INSURANCE FUND.—

''(A) RESERVE RATIO IN EXCESS OF 1.5 PERCENT OF ESTIMATED INSURED DEPOSITS.—If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund exceeds 1.5 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.5 percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

''(B) RESERVE RATIO EQUAL TO OR IN EXCESS OF 1.35 PERCENT OF ESTIMATED INSURED DEPOSITS AND NOT MORE THAN 1.5 PERCENT.—If, at

the end of a calendar year, the reserve ratio of the Deposit Insurance Fund equals or exceeds 1.35 percent of estimated insured deposits and is not more than 1.5 percent of such deposits, the Corporation shall declare the amount in the Fund that is equal to 50 percent of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent of the estimated insured deposits as dividends to be paid to insured depository institutions.

''(C) BASIS FOR DISTRIBUTION OF DIVIDENDS.—

''(i) IN GENERAL.—Solely for the purposes of dividend distribution under this paragraph, the Corporation shall determine each insured depository institution's relative contribution to the Deposit Insurance Fund (or any predecessor deposit insurance fund) for calculating such institution's share of any dividend declared under this paragraph, taking into account the factors described in clause (ii).

''(ii) FACTORS FOR DISTRIBUTION.—In implementing this paragraph in accordance with regulations, the Corporation shall take into account the following factors:

''(I) The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date.

''(II) The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the Deposit Insurance Fund (and any predecessor deposit insurance fund).

''(III) That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by such institution.

''(IV) Such other factors as the Corporation may determine to be appropriate.

''(D) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe by regulation, after notice and opportunity for comment, the method for the calculation, declaration, and payment of dividends under this paragraph.

''(E) LIMITATION.—The Board of Directors may suspend or limit dividends paid under subparagraph (B), if the Board determines in writing that—

''(i) a significant risk of losses to the Deposit Insurance Fund exists over the next 1-year period; and

''(ii) it is likely that such losses will be sufficiently high as to justify a finding by the Board that the reserve ratio should temporarily be allowed—

''(I) to grow without requiring dividends under subparagraph (B); or

''(II) to exceed the maximum amount established under subsection (b)(3)(B)(i).

''(F) CONSIDERATIONS.—In making a determination under subparagraph (E), the Board shall consider—

''(i) national and regional conditions and their impact on insured depository institutions;

''(ii) potential problems affecting insured depository institutions or a specific group or type of depository institution;

''(iii) the degree to which the contingent liability of the Corporation for anticipated failures of insured institutions adequately addresses concerns over funding levels in the Deposit Insurance Fund; and

''(iv) any other factors that the Board determines are appropriate.

''(H) REVIEW OF DETERMINATION.—

''(i) ANNUAL REVIEW.—A determination to suspend or limit dividends under subparagraph (E) shall be reviewed by the Board of Directors annually.

''(ii) ACTION BY BOARD.—Based on each annual review under clause (i), the Board of Directors shall either renew or remove a determination to suspend or limit dividends under subparagraph (E), or shall make a new determination in accordance with this paragraph. Unless justified under the terms of the renewal or new determination, the Corporation shall be required to provide cash dividends under subparagraph (A) or (B), as appropriate.

''(3) ONE-TIME CREDIT BASED ON TOTAL ASSESSMENT BASE AT YEAR-END 1996.—

''(A) IN GENERAL.—Before the end of the 270-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors shall, by regulation after notice and opportunity for comment, provide for a credit to each eligible insured depository institution (or a successor insured depository institution), based on the assessment base of the institution on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

''(B) CREDIT LIMIT.—The aggregate amount of credits available under subparagraph (A) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

''(C) ELIGIBLE INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term 'eligible insured depository institution' means any insured depository institution that—

''(i) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or

''(ii) is a successor to any insured depository institution described in clause (i).

''(D) APPLICATION OF CREDITS.—

''(i) IN GENERAL.—Subject to clause (ii), the amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(E), to the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under subparagraph (A).

''(ii) TEMPORARY RESTRICTION ON USE OF CREDITS.—The amount of a credit to any eligible insured depository institution under this paragraph may not be applied to more than 90 percent of the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010.

''(iii) REGULATIONS.—The regulations prescribed under subparagraph (A) shall establish the qualifications and procedures governing the application of assessment credits pursuant to clause (i).

''(E) LIMITATION ON AMOUNT OF CREDIT FOR CERTAIN DEPOSITORY INSTITUTIONS.—In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 38) at the beginning of an assessment period, the amount of any credit allowed under this paragraph against the assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

''(F) SUCCESSOR DEFINED.—The Corporation shall define the term 'successor' for purposes of this paragraph, by regulation, and may consider any factors as the Board may deem appropriate.

''(4) ADMINISTRATIVE REVIEW.—

''(A) IN GENERAL.—The regulations prescribed under paragraphs (2)(D) and (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

''(B) ADMINISTRATIVE REVIEW.—Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.''.

(b) DEFINITION OF RESERVE RATIO.—Section 3(y) of the Federal Deposit Insurance Act (12 U.S.C. 1813(y)) (as amended by section 2105(b) of this subtitle) is amended by adding at the end the following new paragraph:

''(3) RESERVE RATIO.—The term 'reserve ratio', when used with regard to the Deposit Insurance Fund other than in connection with a reference to the designated reserve ratio, means the ratio of the net worth of the Deposit Insurance Fund to the value of the aggregate estimated insured deposits.''.

**SEC. 2108. DEPOSIT INSURANCE FUND RESTORATION PLANS.**

Section 7(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)) (as amended by section 2105(a) of this subtitle) is amended by adding at the end the following new subparagraph:

''(E) DIF RESTORATION PLANS.—

''(i) IN GENERAL.—Whenever—

''(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

''(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made,

the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

''(ii) REQUIREMENTS OF RESTORATION PLAN.—A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 5-year period beginning upon the implementation of the plan (or such longer period as the Corporation may determine to be necessary due to extraordinary circumstances).

''(iii) RESTRICTION ON ASSESSMENT CREDITS.—As part of any restoration plan under this subparagraph, the Corporation may elect to restrict the application of assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

''(iv) LIMITATION ON RESTRICTION.—Notwithstanding clause (iii), while any restoration plan under this subparagraph is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed on the institution for any assessment period in an amount equal to the lesser of—

''(I) the amount of the assessment; or

''(II) the amount equal to 3 basis points of the institution's assessment base.

''(v) TRANSPARENCY.—Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.''.

**SEC. 2109. REGULATIONS REQUIRED.**

(a) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall prescribe final regulations, after notice and opportunity for comment—

(1) designating the reserve ratio for the Deposit Insurance Fund in accordance with section 7(b)(3) of the Federal Deposit Insurance Act (as amended by section 2105 of this subtitle);

(2) implementing increases in deposit insurance coverage in accordance with the amendments made by section 2103 of this subtitle;

(3) implementing the dividend requirement under section 7(e)(2) of the Federal Deposit Insurance Act (as amended by section 2107 of this subtitle);

(4) implementing the 1-time assessment credit to certain insured depository institutions in accordance with section 7(e)(3) of the Federal Deposit Insurance Act, as amended by section 2107 of this subtitle, including the qualifications and procedures under which the Corporation would apply assessment credits; and

(5) providing for assessments under section 7(b) of the Federal Deposit Insurance Act, as amended by this subtitle.

(b) TRANSITION PROVISIONS.—

(1) CONTINUATION OF EXISTING ASSESSMENT REGULATIONS.—No provision of this subtitle or any amendment made by this subtitle shall be construed as affecting the authority of the Corporation to set or collect deposit insurance assessments pursuant to any regulations in effect before the effective date of the final regulations prescribed under subsection (a).

(2) TREATMENT OF DIF MEMBERS UNDER EXISTING REGULATIONS.—As of the date of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund pursuant to section 2102, the assessment regulations in effect immediately before the date of the enactment of this Act shall continue to apply to all members of the Deposit Insurance Fund, until such regulations are modified by the Corporation, notwithstanding that such regulations may refer to ''Bank Insurance Fund members'' or ''Savings Association Insurance Fund members''.

## TITLE III—DIGITAL TELEVISION TRANSITION AND PUBLIC SAFETY

**SEC. 3001. SHORT TITLE; DEFINITION.**

(a) SHORT TITLE.—This title may be cited as the ''Digital Television Transition and Public Safety Act of 2005''.

(b) DEFINITION.—As used in this Act, the term ''Assistant Secretary'' means the Assistant Secretary for Communications and Information of the Department of Commerce.

**SEC. 3002. ANALOG SPECTRUM RECOVERY: FIRM DEADLINE.**

(a) AMENDMENTS.—Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) is amended—

(1) in subparagraph (A)—

(A) by inserting ''full-power'' before ''television broadcast license''; and

(B) by striking ''December 31, 2006'' and inserting ''February 17, 2009'';

(2) by striking subparagraph (B);

(3) in subparagraph (C)(i)(I), by striking ''or (B)'';

(4) in subparagraph (D), by striking ''subparagraph (C)(i)'' and inserting ''subparagraph (B)(i)''; and

(5) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) TERMINATIONS OF ANALOG LICENSES AND BROADCASTING.—The Federal Communications Commission shall take such actions as are necessary—

(1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and

(2) to require by February 18, 2009, that all broadcasting by Class A stations, whether in the analog television service or digital television service, and all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).

(c) CONFORMING AMENDMENTS.—

(1) Section 337(e) of the Communications Act of 1934 (47 U.S.C. 337(e)) is amended—

(A) in paragraph (1)—

(i) by striking ''CHANNELS 60 TO 69'' and inserting ''CHANNELS 52 TO 69'';

(ii) by striking ''person who'' and inserting ''full-power television station licensee that'';

(iii) by striking ''746 and 806 megahertz'' and inserting ''698 and 806 megahertz''; and

(iv) by striking ''the date on which the digital television service transition period terminates, as determined by the Commission'' and inserting ''February 17, 2009'';

(B) in paragraph (2), by striking ''746 megahertz'' and inserting ''698 megahertz''; and

**SEC. 3003. AUCTION OF RECOVERED SPECTRUM.**

(a) DEADLINE FOR AUCTION.—Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(1) by redesignating the second paragraph (15) of such section (as added by section 203(b) of the Commercial Spectrum Enhancement Act (P.L. 108–494; 118 Stat. 3993)), as paragraph (16) of such section; and

(2) in the first paragraph (15) of such section (as added by section 3(a)of the Auction Reform Act of 2002 (P.L. 107–195; 116 Stat. 716)), by adding at the end of subparagraph (C) the following new clauses:

''(v) ADDITIONAL DEADLINES FOR RECOVERED ANALOG SPECTRUM.—Notwithstanding subparagraph (B), the Commission shall conduct the auction of the licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008, and shall deposit the proceeds of such auction in accordance with paragraph (8)(E)(ii) not later than June 30, 2008.

''(vi) RECOVERED ANALOG SPECTRUM.—For purposes of clause (v), the term 'recovered analog spectrum' means the spectrum between channels 52 and 69, inclusive (between frequencies 698 and 806 megahertz, inclusive) reclaimed from analog television service broadcasting under paragraph (14), other than—

''(I) the spectrum required by section 337 to be made available for public safety services; and

''(II) the spectrum auctioned prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.''.

(b) EXTENSION OF AUCTION AUTHORITY.—Section 309(j)(11) of such Act (47 U.S.C. 309(j)(11)) is amended by striking ''2007'' and inserting ''2011''.

**SEC. 3004. RESERVATION OF AUCTION PROCEEDS.**

Section 309(j)(8) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)) is amended—

(1) in subparagraph (A), by striking ''subparagraph (B) or subparagraph (D)'' and inserting ''subparagraphs (B), (D), and (E)'';

(2) in subparagraph (C)(i), by inserting before the semicolon at the end the following: '', except as otherwise provided in subparagraph (E)(ii)''; and

(3) by adding at the end the following new subparagraph:

''(E) TRANSFER OF RECEIPTS.—

''(i) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a fund to be known as the Digital Television Transition and Public Safety Fund.

''(ii) PROCEEDS FOR FUNDS.—Notwithstanding subparagraph (A), the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to recovered analog spectrum shall be deposited in the Digital Television Transition and Public Safety Fund.

''(iii) TRANSFER OF AMOUNT TO TREASURY.—On September 30, 2009, the Secretary shall transfer $7,363,000,000 from the Digital Television Transition and Public Safety Fund to the general fund of the Treasury.

''(iv) RECOVERED ANALOG SPECTRUM.—For purposes of clause (i), the term 'recovered analog spectrum' has the meaning provided in paragraph (15)(C)(vi).''.

**SEC. 3005. DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM.**

(a) CREATION OF PROGRAM.—The Assistant Secretary shall—

(1) implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes; and

(2) make payments of not to exceed $990,000,000, in the aggregate, through fiscal year 2009 to carry out that program from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E).

(b) CREDIT.—The Assistant Secretary may borrow from the Treasury beginning on October 1, 2009 such sums as may be necessary, but not to exceed $1,500,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(c) PROGRAM SPECIFICATIONS.—

(1) LIMITATIONS.—

(A) TWO-PER-HOUSEHOLD MAXIMUM.—A household may obtain coupons by making a request as required by the regulations under this section between January 1, 2008, and March 31, 2009, inclusive. The Assistant Secretary shall ensure that each requesting household receives, via the United States Postal Service, no more than two coupons.

(B) NO COMBINATIONS OF COUPONS.—Two coupons may not be used in combination toward the purchase of a single digital-to-analog converter box.

(C) DURATION.—All coupons shall expire 3 months after issuance.

(2) DISTRIBUTION OF COUPONS.—The Assistant Secretary shall expend not more than $100,000,000 on administrative expenses and shall ensure that the sum of—

(A) all administrative expenses for the program, including not more than $5,000,000 for consumer education concerning the digital television transition and the availability of the digital-to-analog converter box program; and

(B) the total maximum value of all the coupons redeemed, and issued but not expired, does not exceed $990,000,000.

(3) USE OF ADDITIONAL AMOUNT.—If the Assistant Secretary transmits to the Committee on Energy and Commerce of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate a statement certifying that the sum permitted to be expended under paragraph (2) will be insufficient to fulfill the requests for coupons from eligible households—

(A) paragraph (2) shall be applied—

(i) by substituting ''$160,000,000'' for ''$100,000,000''; and

(ii) by substituting ''$1,500,000,000'' for ''$990,000,000'';

(B) subsection (a)(2) shall be applied by substituting ''$1,500,000,000'' for ''$990,000,000''; and

(C) the additional amount permitted to be expended shall be available 60 days after the Assistant Secretary sends such statement.

(4) COUPON VALUE.—The value of each coupon shall be $40.

(e) DEFINITION OF DIGITAL-TO-ANALOG CONVERTER BOX.—For purposes of this section, the term ''digital-to-analog converter box'' means a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include a remote control device.

**SEC. 3006. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS.**

(a) CREATION OF PROGRAM.—The Assistant Secretary, in consultation with the Secretary of the Department of Homeland Security—

(1) may take such administrative action as is necessary to establish and implement a grant program to assist public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, reallocated public safety spectrum for radio communication; and

(2) shall make payments of not to exceed $1,000,000,000, in the aggregate, through fiscal year 2010 to carry out that program from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E).

(b) CREDIT.—The Assistant Secretary may borrow from the Treasury beginning on October 1, 2006 such sums as may be necessary, but not to exceed $1,000,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(c) CONDITION OF GRANTS.—In order to obtain a grant under the grant program, a public safety agency shall agree to provide, from non-Federal sources, not less than 20 percent of the costs of acquiring and deploying the interoperable communications systems funded under the grant program.

(d) DEFINITIONS.—For purposes of this section:

(1) PUBLIC SAFETY AGENCY.—The term ''public safety agency'' means any State, local, or tribal government entity, or nongovernmental organization authorized by such entity, whose sole or principal purpose is to protect the safety of life, health, or property.

(2) INTEROPERABLE COMMUNICATIONS SYSTEMS.—The term ''interoperable communications systems'' means communications systems which enable public safety agencies to share information amongst local, State, Federal, and tribal public safety agencies in the same area via voice or data signals.

(3) REALLOCATED PUBLIC SAFETY SPECTRUM.—The term ''reallocated public safety spectrum'' means the bands of spectrum located at 764 -776 megahertz and 794–806 megahertz, inclusive.

**SEC. 3007. NYC 9/11 DIGITAL TRANSITION.**

(a) FUNDS AVAILABLE.—From the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) the Assistant Secretary shall make payments of not to exceed $30,000,000, in the aggregate, which shall be available to carry out this section for fiscal years 2007 through 2008. The Assistant Secretary may borrow from the Treasury beginning October 1, 2006 such sums as may be necessary not to exceed $30,000,000 to implement and administer the program in accordance with this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(b) USE OF FUNDS.—The sums available under subsection (a) shall be made available by the Assistant Secretary by grant to be used to reimburse the Metropolitan Television Alliance for costs incurred in the design and deployment of a temporary digital television broadcast system to ensure that, until a permanent facility atop the Freedom Tower is constructed, the members of the Metropolitan Television Alliance can provide the New York City area with an adequate digital television signal as determined by the Federal Communications Commission.

(d) DEFINITIONS.—For purposes of this section:

(1) METROPOLITAN TELEVISION ALLIANCE.—The term ''Metropolitan Television Alliance'' means the organization formed by New York City television broadcast station licensees to locate new shared facilities as a result of the attacks on September 11, 2001 and the loss of use of shared facilities that housed broadcast equipment.

(2) NEW YORK CITY AREA.—The term ''New York City area'' means the five counties comprising New York City and counties of northern New Jersey in immediate proximity to New York City (Bergen, Essex, Union, and Hudson Counties) .

**SEC. 3008. LOW-POWER TELEVISION AND TRANSLATOR DIGITAL-TO-ANALOG CONVERSION.**

(a) CREATION OF PROGRAM.—The Assistant Secretary shall make payments of not to exceed $10,000,000, in the aggregate, during the fiscal year 2008 and 2009 period from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement and administer a program through which each eligible low-power television station may receive compensation toward the cost of the purchase of a digital-to-analog conversion device that enables it to convert the incoming digital signal of its corresponding full-power television station to analog format for transmission on the low-power television station's analog channel. An eligible low-power television station may receive such compensation only if it submits a request for such compensation on or before February 17, 2009. Priority compensation shall be given to eligible low-power television stations in which the license is held by a non-profit corporation and eligible low-power television stations that serve rural areas of fewer than 10,000 viewers.

(b) CREDIT.—The Assistant Secretary may borrow from the Treasury beginning October 1, 2006 such sums as may be necessary, but not to exceed $10,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

(c) ELIGIBLE STATIONS.—For purposes of this section, the term ''eligible low-power television station'' means a low-power television broadcast station, Class A television station, television translator station, or television booster station—

(1) that is itself broadcasting exclusively in analog format; and

(2) that has not purchased a digital-to-analog conversion device prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.

**SEC. 3009. LOW-POWER TELEVISION AND TRANSLATOR UPGRADE PROGRAM.**

(a) ESTABLISHMENT.—The Assistant Secretary shall make payments of not to exceed $65,000,000, in the aggregate, during the fiscal year 2009 from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement and administer a program through which each licensee of an eligible low-power television station may receive reimbursement for equipment to upgrade low-power television stations from analog to digital in eligible rural communities, as that term is defined in section 610(b)(2) of the Rural Electrification Act of 1937 (7 U.S.C. 950bb(b)(2)). Such reimbursements shall be issued to eligible stations no earlier than October 1, 2010. Priority reimbursements shall be given to eligible low-power television stations in which the license is held by a non-profit corporation and eligible low-power television stations that serve rural areas of fewer than 10,000 viewers.

(b) ELIGIBLE STATIONS.—For purposes of this section, the term ''eligible low-power television station'' means a low-power television broadcast station, Class A television station, television translator station, or television booster station—

(1) that is itself broadcasting exclusively in analog format; and

(2) that has not converted from analog to digital operations prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.

**SEC. 3010. NATIONAL ALERT AND TSUNAMI WARNING PROGRAM.**

The Assistant Secretary shall make payments of not to exceed $156,000,000, in the aggregate, during the fiscal year 2007 through 2012 period from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement a unified national alert system capable of alerting the public, on a national, regional, or local basis to emergency situations by using a variety of communications technologies. The Assistant Secretary shall use $50,000,000 of such amounts to implement a tsunami warning and coastal vulnerability program.

**SEC. 3011. ENHANCE 911.**

The Assistant Secretary shall make payments of not to exceed $43,500,000, in the aggregate, from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement the ENHANCE 911 Act of 2004.

**SEC. 3012. ESSENTIAL AIR SERVICE PROGRAM.**

(a) IN GENERAL.—If the amount appropriated to carry out the essential air service program under subchapter II of chapter 417 of title 49, United States Code, equals or exceeds $110,000,000 for fiscal year 2007 or 2008, then the Secretary of Commerce shall make $15,000,000 available, from the Digital Television Transition and Public Safety Fund established by section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)), to the Secretary of Transportation for use in carrying out the essential air service program for that fiscal year.

(b) APPLICATION WITH OTHER FUNDS.—Amounts made available under subsection (a) for any fiscal year shall be in addition to any amounts—

(1) appropriated for that fiscal year; or

(2) derived from fees collected pursuant to section 45301(a)(1) of title 49, United States Code, that are made available for obligation and expenditure to carry out the essential air service program for that fiscal year.

(c) ADVANCES.—The Secretary of Transportation may borrow from the Treasury such

sums as may be necessary, but not to exceed $30,000,000 on a temporary and reimbursable basis to implement subsection (a). The Secretary of Transportation shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) and made available to the Secretary under subsection (a).

**SEC. 3014. SUPPLEMENTAL LICENSE FEES.**

In addition to any fees assessed under the Communications Act of 1934 (47 U.S.C. 151 et seq.), the Federal Communications Commission shall assess extraordinary fees for licenses in the aggregate amount of $10,000,000, which shall be deposited in the Treasury during fiscal year 2006 as offsetting receipts.

## TITLE IV—TRANSPORTATION PROVISIONS

**SEC. 4001. EXTENSION OF VESSEL TONNAGE DUTIES.**

(a) EXTENSION OF DUTIES.—Section 36 of the Act entitled ''An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes'', approved August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121), is amended—

(1) by striking ''9 cents per ton'' and all that follows through ''2002,'' the first place it appears and inserting ''4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010,'' and

(2) by striking ''27 cents per ton'' and all that follows through ''2002,'' and inserting ''13.5 cents per ton, not to exceed 67.5 cents per ton per annum, for fiscal years 2006 through 2010,''.

(b) CONFORMING AMENDMENT.—The Act entitled ''An Act concerning tonnage duties on vessels entering otherwise than by sea'', approved March 8, 1910 (36 Stat. 234; 46 U.S.C. App. 132), is amended by striking ''9 cents per ton'' and all that follows through ''and 2 cents'' and inserting ''4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010, and 2 cents''.

## TITLE V—MEDICARE

### Subtitle A—Provisions Relating to Part A

**SEC. 5001. HOSPITAL QUALITY IMPROVEMENT.**

(a) SUBMISSION OF HOSPITAL DATA.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(1) in clause (i)—

(A) in subclause (XIX), by striking ''2007'' and inserting ''2006''; and

(B) in subclause (XX), by striking ''for fiscal year 2008 and each subsequent fiscal year,'' and inserting ''for each subsequent fiscal year, subject to clause (viii),'';

(2) in clause (vii)—

(A) in subclause (I), by striking ''for each of fiscal years 2005 through 2007'' and inserting ''for fiscal years 2005 and 2006''; and

(B) in subclause (II), by striking ''Each'' and inserting ''For fiscal years 2005 and 2006, each''; and

(3) by adding at the end the following new clauses:

''(viii)(I) For purposes of clause (i) for fiscal year 2007 and each subsequent fiscal year, in the case of a subsection (d) hospital that does not submit, to the Secretary in accordance with this clause, data required to be submitted on measures selected under this clause with respect to such a fiscal year, the applicable percentage increase under clause (i) for such fiscal year shall be reduced by 2.0 percentage points. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year, and the Secretary and the Medicare Payment Advisory Commission shall carry out the requirements under section 5001(b) of the Deficit Reduction Act of 2005.

''(II) Each subsection (d) hospital shall submit data on measures selected under this clause to the Secretary in a form and manner, and at a time, specified by the Secretary for purposes of this clause.

''(III) The Secretary shall expand, beyond the measures specified under clause (vii)(II) and consistent with the succeeding subclauses, the set of measures that the Secretary determines to be appropriate for the measurement of the quality of care furnished by hospitals in inpatient settings.

''(IV) Effective for payments beginning with fiscal year 2007, in expanding the number of measures under subclause (III), the Secretary shall begin to adopt the baseline set of performance measures as set forth in the November 2005 report by the Institute of Medicine of the National Academy of Sciences under section 238(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

''(V) Effective for payments beginning with fiscal year 2008, the Secretary shall add other measures that reflect consensus among affected parties and, to the extent feasible and practicable, shall include measures set forth by one or more national consensus building entities.

''(VI) For purposes of this clause and clause (vii), the Secretary may replace any measures or indicators in appropriate cases, such as where all hospitals are effectively in compliance or the measures or indicators have been subsequently shown not to represent the best clinical practice.

''(VII) The Secretary shall establish procedures for making data submitted under this clause available to the public. Such procedures shall ensure that a hospital has the opportunity to review the data that are to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures of process, structure, outcome, patients' perspectives on care, efficiency, and costs of care that relate to services furnished in inpatient settings in hospitals on the Internet website of the Centers for Medicare & Medicaid Services.''.

(b) PLAN FOR HOSPITAL VALUE BASED PURCHASING PROGRAM.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a plan to implement a value based purchasing program for payments under the Medicare program for subsection (d) hospitals beginning with fiscal year 2009.

(2) DETAILS.—Such a plan shall include consideration of the following issues:

(A) The on-going development, selection, and modification process for measures of quality and efficiency in hospital inpatient settings.

(B) The reporting, collection, and validation of quality data.

(C) The structure of value based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment, the size of such payments, and the sources of funding for the value based payments.

(D) The disclosure of information on hospital performance.

In developing such a plan, the Secretary shall consult with relevant affected parties and shall consider experience with such demonstrations that are relevant to the value based purchasing program under this subsection.

(c) QUALITY ADJUSTMENT IN DRG PAYMENTS FOR CERTAIN HOSPITAL ACQUIRED INFECTIONS.—

(1) IN GENERAL.—Section 1886(d)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)) is amended by adding at the end the following new subparagraph:

''(D)(i) For discharges occurring on or after October 1, 2008, the diagnosis-related group to be assigned under this paragraph for a discharge described in clause (ii) shall be a diagnosis-related group that does not result in higher payment based on the presence of a secondary diagnosis code described in clause (iv).

''(ii) A discharge described in this clause is a discharge which meets the following requirements:

''(I) The discharge includes a condition identified by a diagnosis code selected under clause (iv) as a secondary diagnosis.

''(II) But for clause (i), the discharge would have been classified to a diagnosis-related group that results in a higher payment based on the presence of a secondary diagnosis code selected under clause (iv).

''(III) At the time of admission, no code selected under clause (iv) was present.

''(iii) As part of the information required to be reported by a hospital with respect to a discharge of an individual in order for payment to be made under this subsection, for discharges occurring on or after October 1, 2007, the information shall include the secondary diagnosis of the individual at admission.

''(iv) By not later than October 1, 2007, the Secretary shall select diagnosis codes associated with at least two conditions, each of which codes meets all of the following requirements (as determined by the Secretary):

''(I) Cases described by such code have a high cost or high volume, or both, under this title.

''(II) The code results in the assignment of a case to a diagnosis-related group that has a higher payment when the code is present as a secondary diagnosis.

''(III) The code describes such conditions that could reasonably have been prevented through the application of evidence-based guidelines.

The Secretary may from time to time revise (through addition or deletion of codes) the diagnosis codes selected under this clause so long as there are diagnosis codes associated with at least two conditions selected for discharges occurring during any fiscal year.

''(v) In selecting and revising diagnosis codes under clause (iv), the Secretary shall consult with the Centers for Disease Control and Prevention and other appropriate entities.

''(vi) Any change resulting from the application of this subparagraph shall not be taken into account in adjusting the weighting factors under subparagraph (C)(i) or in applying budget neutrality under subparagraph (C)(iii).''.

(2) NO JUDICIAL REVIEW.—Section 1886(d)(7)(B) of such Act (42 U.S.C. 1395ww(d)(7)(B)) is amended by inserting before the period the following: '', including the selection and revision of codes under paragraph (4)(D)''.

**SEC. 5002. CLARIFICATION OF DETERMINATION OF MEDICAID PATIENT DAYS FOR DSH COMPUTATION.**

(a) IN GENERAL.—Section 1886(d)(5)(F)(vi) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(vi)) is amended by adding after and below subclause (II) the following: ''In determining under subclause (II) the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX, the Secretary may, to the extent and for the period the Secretary determines appropriate, include patient days of patients not so eligible but who are regarded as such because they receive benefits under a demonstration project approved under title XI.''.

(b) RATIFICATION AND PROSPECTIVE APPLICATION OF PREVIOUS REGULATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), regulations described in paragraph (3), insofar as such regulations provide for the treatment of individuals eligible for medical assistance under a demonstration project approved under title XI of the Social Security Act under section 1886(d)(5)(F)(vi) of such Act, are hereby ratified, effective as of the date of their respective promulgations.

(2) NO APPLICATION TO CLOSED COST REPORTS.—Paragraph (1) shall not be applied in a manner that requires the reopening of any cost reports which are closed as of the date of the enactment of this Act.

(3) REGULATIONS DESCRIBED.—For purposes of paragraph (1), the regulations described in this paragraph are as follows:

(A) 2000 REGULATION.—Regulations promulgated on January 20, 2000, at 65 Federal Register 3136 et seq, including the policy in such regulations regarding discharges occurring prior to January 20, 2000.

(B) 2003 REGULATION.—Regulations promulgated on August 1, 2003, at 68 Federal Register 45345 et seq.

**SEC. 5003. IMPROVEMENTS TO THE MEDICARE-DEPENDENT HOSPITAL (MDH) PROGRAM.**

(a) 5-YEAR EXTENSION.—

(1) EXTENSION OF PAYMENT METHODOLOGY.—Section 1886(d)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)) is amended—

(A) in clause (i), by striking ''October 1, 2006'' and inserting ''October 1, 2011''; and

(B) in clause (ii)(II)—

(i) by striking ''October 1, 2006'' and inserting ''October 1, 2011''; and

(ii) by inserting ''or for discharges in the fiscal year'' after ''for the cost reporting period''.

(2) CONFORMING AMENDMENTS.—

(A) EXTENSION OF TARGET AMOUNT.—Section 1886(b)(3)(D) of such Act (42 U.S.C. 1395ww(b)(3)(D)) is amended—

(i) in the matter preceding clause (i)—

(I) by striking ''beginning'' and inserting ''occurring''; and

(II) by striking ''October 1, 2006'' and inserting ''October 1, 2011''; and

(ii) in clause (iv), by striking ''through fiscal year 2005'' and inserting ''through fiscal year 2011''.

(B) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—Section 13501(e)(2) of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 1395ww note) is amended by striking ''through fiscal year 2005'' and inserting ''through fiscal year 2011''.

(b) OPTION TO USE 2002 AS BASE YEAR.—Section 1886(b)(3) of such Act (42 U.S.C. 1395ww(b)(3)) is amended—

(1) in subparagraph (D), by inserting ''subject to subparagraph (K),'' after ''(d)(5)(G)),''; and

(2) by adding at the end the following new subparagraph:

''(K)(i) With respect to discharges occurring on or after October 1, 2006, in the case of a medicare-dependent, small rural hospital, for purposes of applying subparagraph (D)—

''(I) there shall be substituted for the base cost reporting period described in subparagraph (D)(i) the 12-month cost reporting period beginning during fiscal year 2002; and

''(II) any reference in such subparagraph to the 'first cost reporting period' described in such subparagraph is deemed a reference to the first cost reporting period beginning on or after October 1, 2006.

''(ii) This subparagraph shall only apply to a hospital if the substitution described in clause (i)(I) results in an increase in the target amount under subparagraph (D) for the hospital.''.

(c) ENHANCED PAYMENT FOR AMOUNT BY WHICH THE TARGET EXCEEDS THE PPS RATE.—Section 1886(d)(5)(G)(ii)(II) of such Act (42 U.S.C. 1395ww(d)(5)(G)(iv)(II)) is amended by inserting ''(or 75 percent in the case of discharges occurring on or after October 1, 2006)'' after ''50 percent''.

(d) ENHANCED DISPROPORTIONATE SHARE HOSPITAL (DSH) TREATMENT FOR MEDICARE DEPENDENT HOSPITALS.—Section 1886(d)(5)(F)(xiv)(II) of such Act (42 U.S.C. 1395ww(d)(5)(F)(xiv)(II)) is amended by inserting ''or, in the case of discharges occurring on or after October 1, 2006, as a medicare-dependent, small rural hospital under subparagraph (G)(iv)'' before the period at the end.

**SEC. 5004. REDUCTION IN PAYMENTS TO SKILLED NURSING FACILITIES FOR BAD DEBT.**

(a) IN GENERAL.—Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:

''(V) In determining such reasonable costs for skilled nursing facilities with respect to cost reporting periods beginning on or after October 1, 2005, the amount of bad debts otherwise treated as allowed costs which are attributable to the coinsurance amounts under this title for individuals who are entitled to benefits under part A and—

''(i) are not described in section 1935(c)(6)(A)(ii) shall be reduced by 30 percent of such amount otherwise allowable; and

''(ii) are described in such section shall not be reduced.''.

(b) TECHNICAL AMENDMENT.—Section 1861(v)(1)(T) of such Act (42 U.S.C. 1395x(v)(1)(T)) is amended by striking ''section 1833(t)(5)(B)'' and inserting ''section 1833(t)(8)(B)''.

**SEC. 5005. EXTENDED PHASE-IN OF THE INPATIENT REHABILITATION FACILITY CLASSIFICATION CRITERIA.**

(a) IN GENERAL.—Notwithstanding section 412.23(b)(2) of title 42, Code of Federal Regulations, the Secretary of Health and Human Services shall apply the applicable percent specified in subsection (b) in the classification criterion used under the IRF regulation (as defined in subsection (c)) to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility under the Medicare program under title XVIII of the Social Security Act.

(b) APPLICABLE PERCENT.—For purposes of subsection (a), the applicable percent specified in this subsection for cost reporting periods—

(1) beginning during the 12-month period beginning on July 1, 2006, is 60 percent;

(2) beginning during the 12-month period beginning on July 1, 2007, is 65 percent; and

(3) beginning on or after July 1, 2008, is 75 percent.

(c) IRF REGULATION.—For purposes of subsection (a), the term ''IRF regulation'' means the rule published in the Federal Register on May 7, 2004, entitled ''Medicare Program; Final Rule; Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility'' (69 Fed. Reg. 25752).

**SEC. 5006. DEVELOPMENT OF A STRATEGIC PLAN REGARDING PHYSICIAN INVESTMENT IN SPECIALTY HOSPITALS.**

(a) DEVELOPMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall develop a strategic and implementing plan to address issues described in paragraph (2) regarding physician investment in specialty hospitals (as defined in section 1877(h)(7)(A) of the Social Security Act (42 U.S.C. 1395nn(h)(7)(A)).

(2) ISSUES DESCRIBED.—The issues described in this paragraph are the following:

(A) Proportionality of investment return.

(B) Bona fide investment.

(C) Annual disclosure of investment information.

(D) The provision by specialty hospitals of—

(i) care to patients who are eligible for medical assistance under a State plan approved under title XIX of the Social Security Act, including patients not so eligible but who are regarded as such because they receive benefits under a demonstration project approved under title XI of such Act; and

(ii) charity care.

(E) Appropriate enforcement.

(b) REPORTS.—

(1) INTERIM REPORT.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall submit an interim report to the appropriate committees of jurisdiction of Congress on the status of the development of the plan under subsection (a).

(2) FINAL REPORT.—Not later six months after the date of the enactment of this Act, the Secretary shall submit a final report to the appropriate committees of jurisdiction of Congress on the plan developed under subsection (a) together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(c) CONTINUATION OF SUSPENSION ON ENROLLMENT.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall continue the suspension on enrollment of new specialty hospitals (as so defined) under title XVIII of the Social Security Act until the earlier of—

(A) the date that the Secretary submits the final report under subsection (b)(2); or

(B) the date that is six months after the date of the enactment of this Act.

(2) EXTENSION OF SUSPENSION.—If the Secretary fails to submit the final report described in subsection (b)(2) by the date required under such subsection, the Secretary shall—

(A) extend the suspension on enrollment under paragraph (1) for an additional two months; and

(B) provide a certification to the appropriate committees of jurisdiction of Congress of such failure.

(d) WAIVER.—In developing the plan and report required under this section, the Secretary may waive such requirements of section 553 of title 5, United States Code, as the Secretary determines necessary.

(e) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary for fiscal year 2006, $2,000,000 to carry out this section.

**SEC. 5007. MEDICARE DEMONSTRATION PROJECTS TO PERMIT GAINSHARING ARRANGEMENTS.**

(a) ESTABLISHMENT.—The Secretary shall establish under this section a qualified gainsharing demonstration program under which the Secretary shall approve demonstration projects by not later than November 1, 2006, to test and evaluate methodologies and arrangements between hospitals and physicians designed to govern the utilization of inpatient hospital resources and physician work to improve the quality and efficiency of care provided to Medicare beneficiaries and to develop improved operational and financial hospital performance with sharing of remuneration as specified in the project. Such projects shall be operational by not later than January 1, 2007.

(b) REQUIREMENTS DESCRIBED.—A demonstration project under this section shall meet the following requirements for purposes of maintaining or improving quality while achieving cost savings:

(1) ARRANGEMENT FOR REMUNERATION AS SHARE OF SAVINGS.—The demonstration project shall involve an arrangement between a hospital and a physician under which the hospital provides remuneration to the physician that represents solely a share

of the savings incurred directly as a result of collaborative efforts between the hospital and the physician.

(2) WRITTEN PLAN AGREEMENT.—The demonstration project shall be conducted pursuant to a written agreement that—

(A) is submitted to the Secretary prior to implementation of the project; and

(B) includes a plan outlining how the project will achieve improvements in quality and efficiency.

(3) PATIENT NOTIFICATION.—The demonstration project shall include a notification process to inform patients who are treated in a hospital participating in the project of the participation of the hospital in such project.

(4) MONITORING QUALITY AND EFFICIENCY OF CARE.—The demonstration project shall provide measures to ensure that the quality and efficiency of care provided to patients who are treated in a hospital participating in the demonstration project is continuously monitored to ensure that such quality and efficiency is maintained or improved.

(5) INDEPENDENT REVIEW.—The demonstration project shall certify, prior to implementation, that the elements of the demonstration project are reviewed by an organization that is not affiliated with the hospital or the physician participating in the project.

(6) REFERRAL LIMITATIONS.—The demonstration project shall not be structured in such a manner as to reward any physician participating in the project on the basis of the volume or value of referrals to the hospital by the physician.

(c) WAIVER OF CERTAIN RESTRICTIONS.—

(1) IN GENERAL.—An incentive payment made by a hospital to a physician under and in accordance with a demonstration project shall not constitute—

(A) remuneration for purposes of section 1128B of the Social Security Act (42 U.S.C. 1320a-7b);

(B) a payment intended to induce a physician to reduce or limit services to a patient entitled to benefits under Medicare or a State plan approved under title XIX of such Act in violation of section 1128A of such Act (42 U.S.C. 1320a-7a); or

(C) a financial relationship for purposes of section 1877 of such Act (42 U.S.C. 1395nn).

(2) PROTECTION FOR EXISTING ARRANGEMENTS.—In no case shall the failure to comply with the requirements described in paragraph (1) affect a finding made by the Inspector General of the Department of Health and Human Services prior to the date of the enactment of this Act that an arrangement between a hospital and a physician does not violate paragraph (1) or (2) of section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7(a)).

(d) PROGRAM ADMINISTRATION.—

(1) SOLICITATION OF APPLICATIONS.—By not later than 90 days after the date of the enactment of this Act, the Secretary shall solicit applications for approval of a demonstration project, in such form and manner, and at such time specified by the Secretary.

(2) NUMBER OF PROJECTS APPROVED.—The Secretary shall approve not more than 6 demonstration projects, at least 2 of which shall be located in a rural area.

(3) DURATION.—The qualified gainsharing demonstration program under this section shall be conducted for the period beginning on January 1, 2007, and ending on December 31, 2009.

(e) REPORTS.—

(1) INITIAL REPORT.—By not later than December 1, 2006, the Secretary shall submit to Congress a report on the number of demonstration projects that will be conducted under this section.

(2) PROJECT UPDATE.—By not later than December 1, 2007, the Secretary shall submit to Congress a report on the details of such projects (including the project improvements towards quality and efficiency described in subsection (b)(2)(B)).

(3) QUALITY IMPROVEMENT AND SAVINGS.—By not later than December 1, 2008, the Secretary shall submit to Congress a report on quality improvement and savings achieved as a result of the qualified gainsharing demonstration program established under subsection (a).

(4) FINAL REPORT.—By not later than May 1, 2010, the Secretary shall submit to Congress a final report on the information described in paragraph (3).

(f) FUNDING.—

(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary for fiscal year 2006 $6,000,000, to carry out this section.

(2) AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available for expenditure through fiscal year 2010.

(g) DEFINITIONS.—For purposes of this section:

(1) DEMONSTRATION PROJECT.—The term ''demonstration project'' means a project implemented under the qualified gainsharing demonstration program established under subsection(a).

(2) HOSPITAL.—The term ''hospital'' means a hospital that receives payment under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)), and does not include a critical access hospital (as defined in section 1861(mm) of such Act (42 U.S.C. 1395x(mm))).

(3) MEDICARE.—The term ''Medicare'' means the programs under title XVIII of the Social Security Act.

(4) PHYSICIAN.—The term ''physician'' means, with respect to a demonstration project, a physician described in paragraph (1) or (3) of section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) who is licensed as such a physician in the area in which the project is located and meets requirements to provide services for which benefits are provided under Medicare. Such term shall be deemed to include a practitioner described in section 1842(e)(18)(C) of such Act (42 U.S.C. 1395u(e)(18)(C)).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

**SEC. 5008. POST-ACUTE CARE PAYMENT REFORM DEMONSTRATION PROGRAM.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—By not later than January 1, 2008, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a demonstration program for purposes of understanding costs and outcomes across different post-acute care sites. Under such program, with respect to diagnoses specified by the Secretary, an individual who receives treatment from a provider for such a diagnosis shall receive a single comprehensive assessment on the date of discharge from a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) of the needs of the patient and the clinical characteristics of the diagnosis to determine the appropriate placement of such patient in a post-acute care site. The Secretary shall use a standardized patient assessment instrument across all post-acute care sites to measure functional status and other factors during the treatment and at discharge from each provider. Participants in the program shall provide information on the fixed and variable costs for each individual. An additional comprehensive assessment shall be provided at the end of the episode of care.

(2) NUMBER OF SITES.—The Secretary shall conduct the demonstration program under this section with sufficient numbers to determine statistically reliable results.

(3) DURATION.—The Secretary shall conduct the demonstration program under this section for a 3-year period.

(b) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq.; 42 U.S.C. 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

(c) REPORT.—Not later than 6 months after the completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, that includes the results of the program and recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

(d) FUNDING.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i), $6,000,000 for the costs of carrying out the demonstration program under this section.

## Subtitle B—Provisions Relating to Part B

## CHAPTER 1—PAYMENT PROVISIONS

**SEC. 5101. BENEFICIARY OWNERSHIP OF CERTAIN DURABLE MEDICAL EQUIPMENT (DME).**

(a) DME.—

(1) IN GENERAL.—Section 1834(a)(7)(A) of the Social Security Act (42 U.S.C. 1395m(a)(7)(A)) is amended to read as follows:

''(A) PAYMENT.—In the case of an item of durable medical equipment not described in paragraphs (2) through (6), the following rules shall apply:

''(i) RENTAL.—

''(I) IN GENERAL.—Except as provided in clause (iii), payment for the item shall be made on a monthly basis for the rental of the item during the period of medical need (but payments under this clause may not extend over a period of continuous use (as determined by the Secretary) of longer than 13 months).

''(II) PAYMENT AMOUNT.—Subject to subparagraph (B), the amount recognized for the item, for each of the first 3 months of such period, is 10 percent of the purchase price recognized under paragraph (8) with respect to the item, and, for each of the remaining months of such period, is 7.5 percent of such purchase price.

''(ii) OWNERSHIP AFTER RENTAL.—On the first day that begins after the 13th continuous month during which payment is made for the rental of an item under clause (i), the supplier of the item shall transfer title to the item to the individual.

''(iii) PURCHASE AGREEMENT OPTION FOR POWER-DRIVEN WHEELCHAIRS.—In the case of a power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the individual exercises such option.

''(iv) MAINTENANCE AND SERVICING.—After the supplier transfers title to the item under clause (ii) or in the case of a power-driven wheelchair for which a purchase agreement has been entered into under clause (iii), maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount determined to be appropriate by the Secretary.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items furnished for which the first rental month occurs on or after January 1, 2006.

(b) OXYGEN EQUIPMENT.—

(1) IN GENERAL.—Section 1834(a)(5) of such Act (42 U.S.C. 1395m(a)(5)) is amended—

(A) in subparagraph (A), by striking ''and (E)'' and inserting ''(E), and (F)''; and

(B) by adding at the end the following new subparagraph:

''(F) OWNERSHIP OF EQUIPMENT.—

''(i) IN GENERAL.—Payment for oxygen equipment (including portable oxygen equipment) under this paragraph may not extend over a period of continuous use (as determined by the Secretary) of longer than 36 months.

''(ii) OWNERSHIP.—

''(I) TRANSFER OF TITLE.—On the first day that begins after the 36th continuous month during which payment is made for the equipment under this paragraph, the supplier of the equipment shall transfer title to the equipment to the individual.

''(II) PAYMENTS FOR OXYGEN AND MAINTENANCE AND SERVICING.—After the supplier transfers title to the equipment under subclause (I)—

''(aa) payments for oxygen shall continue to be made in the amount recognized for oxygen under paragraph (9) for the period of medical need; and

''(bb) maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the equipment), and such payments shall be in an amount determined to be appropriate by the Secretary.''.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by paragraph (1) shall take effect on January 1, 2006.

(B) APPLICATION TO CERTAIN INDIVIDUALS.—In the case of an individual receiving oxygen equipment on December 31, 2005, for which payment is made under section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), the 36-month period described in paragraph (5)(F)(i) of such section, as added by paragraph (1), shall begin on January 1, 2006.

**SEC. 5102. ADJUSTMENTS IN PAYMENT FOR IMAGING SERVICES.**

(a) MULTIPLE PROCEDURE PAYMENT REDUCTION FOR IMAGING EXEMPTED FROM BUDGET NEUTRALITY.—Section 1848(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(B)) is amended—

(1) in clause (ii)(II), by striking ''clause (iv)'' and inserting ''clauses (iv) and (v)'';

(2) in clause (iv) in the heading, by inserting ''OF CERTAIN ADDITIONAL EXPENDITURES'' after ''EXEMPTION''; and

(3) by adding at the end the following new clause:

''(v) EXEMPTION OF CERTAIN REDUCED EXPENDITURES FROM BUDGET-NEUTRALITY CALCULATION.—The following reduced expenditures, as estimated by the Secretary, shall not be taken into account in applying clause (ii)(II):

''(I) REDUCED PAYMENT FOR MULTIPLE IMAGING PROCEDURES.—Effective for fee schedules established beginning with 2007, reduced expenditures attributable to the multiple procedure payment reduction for imaging under the final rule published by the Secretary in the Federal Register on November 21, 2005 (42 CFR 405, et al.) insofar as it relates to the physician fee schedules for 2006 and 2007.''.

(b) REDUCTION IN PHYSICIAN FEE SCHEDULE TO OPD PAYMENT AMOUNT FOR IMAGING SERVICES.—Section 1848 of such Act (42 U.S.C. 1395w–4) is amended—

(1) in subsection (b), by adding at the end the following new paragraph:

''(4) SPECIAL RULE FOR IMAGING SERVICES.—

''(A) IN GENERAL.—In the case of imaging services described in subparagraph (B) furnished on or after January 1, 2007, if—

''(i) the technical component (including the technical component portion of a global fee) of the service established for a year under the fee schedule described in paragraph (1) without application of the geographic adjustment factor described in paragraph (1)(C), exceeds

''(ii) the medicare OPD fee schedule amount established under the prospective payment system for hospital outpatient department services under paragraph (3)(D) of section 1833(t) for such service for such year, determined without regard to geographic adjustment under paragraph (2)(D) of such section,

the Secretary shall substitute the amount described in clause (ii), adjusted by the geographic adjustment factor described in paragraph (1)(C), for the fee schedule amount for such technical component for such year.

''(B) IMAGING SERVICES DESCRIBED.—For purposes of subparagraph (A), imaging services described in this subparagraph are imaging and computer-assisted imaging services, including X-ray, ultrasound (including echocardiography), nuclear medicine (including positron emission tomography), magnetic resonance imaging, computed tomography, and fluoroscopy, but excluding diagnostic and screening mammography.''; and

(2) in subsection (c)(2)(B)(v), as added by subsection (a)(3), by adding at the end the following new subclause:

''(II) OPD PAYMENT CAP FOR IMAGING SERVICES.—Effective for fee schedules established beginning with 2007, reduced expenditures attributable to subsection (b)(4).''.

**SEC. 5103. LIMITATION ON PAYMENTS FOR PROCEDURES IN AMBULATORY SURGICAL CENTERS.**

Section 1833(i)(2) of the Social Security Act (42 U.S.C. 1395l(i)(2)) is amended—

(1) in subparagraph (A), by inserting ''subject to subparagraph (E),'' after ''subparagraph (D),'';

(2) in subparagraph (D)(ii), by inserting before the period at the end the following: ''and taking into account reduced expenditures that would apply if subparagraph (E) were to continue to apply, as estimated by the Secretary''; and

(3) by adding at the end the following new subparagraph:

''(E) With respect to surgical procedures furnished on or after January 1, 2007, and before the effective date of the implementation of a revised payment system under subparagraph (D), if—

''(i) the standard overhead amount under subparagraph (A) for a facility service for such procedure, without the application of any geographic adjustment, exceeds

''(ii) the medicare OPD fee schedule amount established under the prospective payment system for hospital outpatient department services under paragraph (3)(D) of section 1833(t) for such service for such year, determined without regard to geographic adjustment under paragraph (2)(D) of such section,

the Secretary shall substitute under subparagraph (A) the amount described in clause (ii) for the standard overhead amount for such service referred to in clause (i).''.

**SEC. 5104. UPDATE FOR PHYSICIANS' SERVICES FOR 2006.**

(a) UPDATE FOR 2006.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended—

(1) in paragraph (4)(B), in the matter preceding clause (i), by striking ''paragraph (5)'' and inserting ''paragraphs (5) and (6)''; and

(2) by adding at the end the following new paragraph:

''(6) UPDATE FOR 2006.—The update to the single conversion factor established in paragraph (1)(C) for 2006 shall be 0 percent.''.

(b) NOT TREATED AS CHANGE IN LAW AND REGULATION IN SUSTAINABLE GROWTH RATE DETERMINATION.—The amendments made by subsection (a) shall not be treated as a change in law for purposes of applying section 1848(f)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)).

(c) MEDPAC REPORT.—

(1) IN GENERAL.—By not later than March 1, 2007, the Medicare Payment Advisory Commission shall submit a report to Congress on mechanisms that could be used to replace the sustainable growth rate system under section 1848(f) of the Social Security Act (42 U.S.C. 1395w–4(f)).

(2) REQUIREMENTS.—The report required under paragraph (1) shall—

(A) identify and examine alternative methods for assessing volume growth;

(B) review options to control the volume of physicians' services under the Medicare program while maintaining access to such services by Medicare beneficiaries;

(C) examine the application of volume controls under the Medicare physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4);

(D) identify levels of application of volume controls, such as group practice, hospital medical staff, type of service, geographic area, and outliers;

(E) examine the administrative feasibility of implementing the options reviewed under subparagraph (B), including the availability of data and time lags;

(F) examine the extent to which the alternative methods identified and examined under subparagraph (A) should be specified in such section 1848; and

(G) identify the appropriate level of discretion for the Secretary of Health and Human Services to change payment rates under the Medicare physician fee schedule or otherwise take steps that affect physician behavior.

Such report shall include such recommendations on alternative mechanisms to replace the sustainable growth rate system as the Medicare Payment Advisory Commission determines appropriate.

(3) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Medicare Payment Advisory Commission $550,000, to carry out this subsection.

**SEC. 5105. THREE-YEAR TRANSITION OF HOLD HARMLESS PAYMENTS FOR SMALL RURAL HOSPITALS UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES.**

Section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)) is amended—

(1) by inserting ''(I)'' before ''In the case''; and

(2) by adding at the end the following new subclause:

''(II) In the case of a hospital located in a rural area and that has not more than 100 beds and that is not a sole community hospital (as defined in section 1886(d)(5)(D)(iii)), for covered OPD services furnished on or after January 1, 2006, and before January 1, 2009, for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the applicable percentage of the amount of such difference. For purposes of the previous sentence, with respect to covered OPD services furnished during 2006, 2007, or 2008, the applicable percentage shall be 95 percent, 90 percent, and 85 percent, respectively.''.

**SEC. 5106. UPDATE TO THE COMPOSITE RATE COMPONENT OF THE BASIC CASE-MIX ADJUSTED PROSPECTIVE PAYMENT SYSTEM FOR DIALYSIS SERVICES.**

Section 1881(b)(12) of the Social Security Act (42 U.S.C. 1395rr(b)(12)) is amended—

(1) in subparagraph (F), in the flush matter at the end, by striking ''Nothing'' and inserting ''Except as provided in subparagraph (G), nothing'';

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph:

''(G) The Secretary shall increase the amount of the composite rate component of the basic case-mix adjusted system under subparagraph (B) for dialysis services furnished on or after January 1, 2006, by 1.6 percent above the amount of such composite rate component for such services furnished on December 31, 2005.''.

**SEC. 5107. REVISIONS TO PAYMENTS FOR THERAPY SERVICES.**

(a) EXCEPTION TO CAPS FOR 2006.—

(1) IN GENERAL.—Section 1833(g) of the Social Security Act (42 U.S.C. 1395l(g)) is amended—

(A) in each of paragraphs (1) and (3), by striking ''paragraph (4)'' and inserting ''paragraphs (4) and (5)''; and

(B) by adding at the end the following new paragraph:

''(5) With respect to expenses incurred during 2006 for services, the Secretary shall implement a process under which an individual enrolled under this part may, upon request of the individual or a person on behalf of the individual, obtain an exception from the uniform dollar limitation specified in paragraph (2), for services described in paragraphs (1) and (3) if the provision of such services is determined to be medically necessary. Under such process, if the Secretary does not make a decision on such a request for an exception within 10 business days of the date of the Secretary's receipt of the request, the Secretary shall be deemed to have found the services to be medically necessary.''.

(2) TIMELY IMPLEMENTATION.—The Secretary of Health and Human Services shall waive such provisions of law and regulation (including those described in section 110(c) of Public Law 108-173) as are necessary to implement the amendments made by paragraph (1) on a timely basis and, notwithstanding any other provision of law, may implement such amendments by program instruction or otherwise. There shall be no administrative or judicial review under section 1869 or section 1878 of the Social Security Act (42 U.S.C. 1395ff and 1395oo), or otherwise of the process (including the establishment of the process) under section 1833(g)(5) of such Act, as added by paragraph (1).

(b) IMPLEMENTATION OF CLINICALLY APPROPRIATE CODE EDITS IN ORDER TO IDENTIFY AND ELIMINATE IMPROPER PAYMENTS FOR THERAPY SERVICES.—By not later than July 1, 2006, the Secretary of Health and Human Services shall implement clinically appropriate code edits with respect to payments under part B of title XVIII of the Social Security Act for physical therapy services, occupational therapy services, and speech-language pathology services in order to identify and eliminate improper payments for such services, including edits of clinically illogical combinations of procedure codes and other edits to control inappropriate billings.

## CHAPTER 2—MISCELLANEOUS

**SEC. 5111. ACCELERATED IMPLEMENTATION OF INCOME-RELATED REDUCTION IN PART B PREMIUM SUBSIDY.**

Section 1839(i)(3)(B) of the Social Security Act (42 U.S.C. 1395r(i)(3)(B)) is amended—

(1) in the heading, by striking ''5-YEAR'' and inserting ''3-YEAR'';

(2) in the matter preceding clause (i), by striking ''2011'' and inserting ''2009'';

(3) in clause (i), by striking ''20 percent'' and inserting ''33 percent'';

(4) in clause (ii), by striking ''40 percent'' and inserting ''67 percent''; and

(5) by striking clauses (iii) and (iv).

**SEC. 5112. MEDICARE COVERAGE OF ULTRASOUND SCREENING FOR ABDOMINAL AORTIC ANEURYSMS.**

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) by striking ''and'' at the end of subparagraph (Y);

(B) by adding ''and'' at the end of subparagraph (Z) and moving such subparagraph 2 ems to the left; and

(C) by adding at the end the following new subparagraph:

''(AA) ultrasound screening for abdominal aortic aneurysm (as defined in subsection (bbb)) for an individual—

''(i) who receives a referral for such an ultrasound screening as a result of an initial preventive physical examination (as defined in section 1861(ww)(1));

''(ii) who has not been previously furnished such an ultrasound screening under this title; and

''(iii) who—

''(I) has a family history of abdominal aortic aneurysm; or

''(II) manifests risk factors included in a beneficiary category recommended for screening by the United States Preventive Services Task Force regarding abdominal aortic aneurysms;''; and

(2) by adding at the end the following new subsection:

''Ultrasound Screening for Abdominal Aortic Aneurysm

''(bbb) The term 'ultrasound screening for abdominal aortic aneurysm' means—

''(1) a procedure using sound waves (or such other procedures using alternative technologies, of commensurate accuracy and cost, that the Secretary may specify) provided for the early detection of abdominal aortic aneurysm; and

''(2) includes a physician's interpretation of the results of the procedure.''.

(b) INCLUSION OF ULTRASOUND SCREENING FOR ABDOMINAL AORTIC ANEURYSM IN INITIAL PREVENTIVE PHYSICAL EXAMINATION.—Section 1861(ww)(2) of such Act (42 U.S.C. 1395x(ww)(2)) is amended by adding at the end the following new subparagraph:

''(L) Ultrasound screening for abdominal aortic aneurysm as defined in section 1861(bbb).''.

(c) PAYMENT FOR ULTRASOUND SCREENING FOR ABDOMINAL AORTIC ANEURYSM.—Section 1848(j)(3) of such Act (42 U.S.C. 1395w–4(j)(3)) is amended by inserting ''(2)(AA),'' after ''(2)(W),''.

(d) FREQUENCY.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) by striking ''and'' at the end of subparagraph (L);

(2) by striking the semicolon at the end of subparagraph (M) and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(N) in the case of ultrasound screening for abdominal aortic aneurysm which is performed more frequently than is provided for under section 1861(s)(2)(AA);''.

(e) NON-APPLICATION OF PART B DEDUCTIBLE.—Section 1833(b) of such Act (42 U.S.C. 1395l(b)) is amended in the first sentence—

(1) by striking ''and'' before ''(6)''; and

(2) by inserting '', and (7) such deductible shall not apply with respect to ultrasound screening for abdominal aortic aneurysm (as defined in section 1861(bbb))'' before the period at the end.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2007.

**SEC. 5113. IMPROVING PATIENT ACCESS TO, AND UTILIZATION OF, COLORECTAL CANCER SCREENING.**

(a) NON-APPLICATION OF DEDUCTIBLE FOR COLORECTAL CANCER SCREENING TESTS.—Section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)), as amended by section 5112(e), is amended in the first sentence—

(1) by striking ''and'' before ''(7)''; and

(2) by inserting '', and (8) such deductible shall not apply with respect to colorectal cancer screening tests (as described in section 1861(pp)(1))'' before the period at the end.

(b) CONFORMING AMENDMENTS.—Paragraphs (2)(C)(ii) and (3)(C)(ii) of section 1834(d) of such Act (42 U.S.C. 1395m(d)) are each amended—

(1) by striking ''DEDUCTIBLE AND'' in the heading; and

(2) in subclause (I), by striking ''deductible or'' each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2007.

**SEC. 5114. DELIVERY OF SERVICES AT FEDERALLY QUALIFIED HEALTH CENTERS.**

(a) COVERAGE.—

(1) IN GENERAL.—Section 1861(aa)(3) of the Social Security Act (42 U.S.C. 1395x(aa)(3)) is amended—

(A) in subparagraph (A), by striking '', and'' and inserting ''and services described in subsections (qq) and (vv); and'';

(B) in subparagraph (B), by striking ''sections 329, 330, and 340'' and inserting ''section 330''; and

(C) in the flush matter at the end, by inserting ''by the center or by a health care professional under contract with the center'' after ''outpatient of a Federally qualified health center''.

(2) CONSOLIDATED BILLING.—The first sentence of section 1842(b)(6)(F) of such Act (42 U.S.C. 1395u(b)(6)(F)) is amended—

(A) by striking ''and (G)'' and inserting ''(G)''; and

(B) by inserting before the period at the end the following: '', and (H) in the case of services described in section 1861(aa)(3) that are furnished by a health care professional under contract with a Federally qualified health center, payment shall be made to the center''.

(b) TECHNICAL CORRECTIONS.—Clauses (i) and (ii)(II) of section 1861(aa)(4)(A) of such Act (42 U.S.C. 1395x(aa)(4)(A)) are each amended by striking ''(other than subsection (h))''.

(c) EFFECTIVE DATES.—The amendments made by this section shall apply to services furnished on or after January 1, 2006.

**SEC. 5115. WAIVER OF PART B LATE ENROLLMENT PENALTY FOR CERTAIN INTERNATIONAL VOLUNTEERS.**

(a) IN GENERAL.—

(1) WAIVER OF PENALTY.—Section 1839(b) of the Social Security Act (42 U.S.C. 1395r(b)) is amended in the second sentence by inserting the following before the period at the end: ''or months for which the individual can demonstrate that the individual was an individual described in section 1837(k)(3)''.

(2) SPECIAL ENROLLMENT PERIOD.—

(A) IN GENERAL.—Section 1837 of such Act (42 U.S.C. 1395p) is amended by adding at the end the following new subsection:

''(k)(1) In the case of an individual who—

''(A) at the time the individual first satisfies paragraph (1) or (2) of section 1836, is described in paragraph (3), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period; or

''(B) has terminated enrollment under this section during a month in which the individual is described in paragraph (3),

there shall be a special enrollment period described in paragraph (2).

''(2) The special enrollment period described in this paragraph is the 6-month period beginning on the first day of the month which includes the date that the individual is no longer described in paragraph (3).

''(3) For purposes of paragraph (1), an individual described in this paragraph is an individual who—

''(A) is serving as a volunteer outside of the United States through a program—

''(i) that covers at least a 12-month period; and

''(ii) that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

''(B) demonstrates health insurance coverage while serving in the program.''.

(B) COVERAGE PERIOD.—Section 1838 of such Act (42 U.S.C. 1395q) is amended by adding at the end the following new subsection:

''(f) Notwithstanding subsection (a), in the case of an individual who enrolls during a special enrollment period pursuant to section 1837(k), the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall apply to months beginning with January 2007 and the amendments made by subsection (a)(2) shall take effect on January 1, 2007.

## Subtitle C—Provisions Relating to Parts A and B

### SEC. 5201. HOME HEALTH PAYMENTS.

(a) 2006 UPDATE.—Section 1895(b)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(B)(ii)) is amended—

(1) in subclause (III), by striking ''each of 2005 and 2006'' and inserting ''all of 2005'';

(2) by striking ''or'' at the end of subclause (III);

(3) in subclause (IV), by striking ''2007 and'' and by redesignating such subclause as subclause (V); and

(4) by inserting after subclause (III) the following new subclause:

''(IV) 2006, 0 percent; and''.

(b) APPLYING RURAL ADD-ON POLICY FOR 2006.—Section 421(a) of Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2283) is amended by inserting ''and episodes and visits beginning on or after January 1, 2006, and before January 1, 2007,'' after ''April 1, 2005,''.

(c) HOME HEALTH CARE QUALITY IMPROVEMENT.—Section 1895(b)(3)(B) of the Social Security Act (42 U.S.C.fff(b)(3)(B)) is amended—

(1) in clause (ii)(V), as redesignated by subsection (a)(3), by inserting ''subject to clause (v),'' after ''subsequent year,''; and

(2) by adding at the end the following new clause:

''(v) ADJUSTMENT IF QUALITY DATA NOT SUBMITTED.—

''(I) ADJUSTMENT.—For purposes of clause (ii)(V), for 2007 and each subsequent year, in the case of a home health agency that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the home health market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points. Such reduction shall apply only with respect to the year involved, and the Secretary shall not take into account such reduction in computing the prospective payment amount under this section for a subsequent year, and the Medicare Payment Advisory Commission shall carry out the requirements under section 5201(d) of the Deficit Reduction Act of 2005.

''(II) SUBMISSION OF QUALITY DATA.—For 2007 and each subsequent year, each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.

''(III) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subclause (II) available to the public. Such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.''.

(d) MEDPAC REPORT ON VALUE BASED PURCHASING.—

(1) IN GENERAL.—Not later than June 1, 2007, the Medicare Payment Advisory Commission shall submit to Congress a report that includes recommendations on a detailed structure of value based payment adjustments for home health services under the Medicare program under title XVIII of the Social Security Act. Such report shall include recommendations concerning the determination of thresholds, the size of such payments, sources of funds, and the relationship of payments for improvement and attainment of quality.

(2) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Medicare Payment Advisory Commission $550,000, to carry out this subsection.

### SEC. 5202. REVISION OF PERIOD FOR PROVIDING PAYMENT FOR CLAIMS THAT ARE NOT SUBMITTED ELECTRONICALLY.

(a) REVISION.—

(1) PART A.—Section 1816(c)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395h(c)(3)(B)(ii)) is amended by striking ''26 days'' and inserting ''28 days''.

(2) PART B.—Section 1842(c)(3)(B)(ii) of such Act (42 U.S.C. 1395u(c)(3)(B)(ii)) is amended by striking ''26 days'' and inserting ''28 days''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to claims submitted on or after January 1, 2006.

### SEC. 5203. TIMEFRAME FOR PART A AND B PAYMENTS.

Notwithstanding sections 1816(c) and 1842(c)(2) of the Social Security Act or any other provision of law—

(1) any payment from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) or from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t) for claims submitted under part A or B of title XVIII of such Act for items and services furnished under such part A or B, respectively, that would otherwise be payable during the period beginning on September 22, 2006, and ending on September 30, 2006, shall be paid on the first business day of October 2006; and

(2) no interest or late penalty shall be paid to an entity or individual for any delay in a payment by reason of the application of paragraph (1).

### SEC. 5204. MEDICARE INTEGRITY PROGRAM FUNDING.

Section 1817(k)(4) of the Social Security Act (42 U.S.C. 1395i(k)(4)) is amended—

(1) in subparagraph (B), by striking ''The amount'' and inserting ''Subject to subparagraph (C), the amount''; and

(2) by adding at the end the following new subparagraph:

''(C) ADJUSTMENTS.—The amount appropriated under subparagraph (A) for a fiscal year is increased as follows:

''(i) For fiscal year 2006, $100,000,000.''.

## Subtitle D—Provisions Relating to Part C

### SEC. 5301. PHASE-OUT OF RISK ADJUSTMENT BUDGET NEUTRALITY IN DETERMINING THE AMOUNT OF PAYMENTS TO MEDICARE ADVANTAGE ORGANIZATIONS.

(a) IN GENERAL.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (j)(1)—

(A) in subparagraph (A)—

(i) by inserting ''(or, beginning with 2007, 1/12 of the applicable amount determined under subsection (k)(1))'' after ''1853(c)(1)''; and

(ii) by inserting ''(for years before 2007)'' after ''adjusted as appropriate'';

(B) in subparagraph (B), by inserting ''(for years before 2007)'' after ''adjusted as appropriate''; and

(2) by adding at the end the following new subsection:

''(k) DETERMINATION OF APPLICABLE AMOUNT FOR PURPOSES OF CALCULATING THE BENCHMARK AMOUNTS.—

''(1) APPLICABLE AMOUNT DEFINED.—For purposes of subsection (j), subject to paragraph (2), the term 'applicable amount' means for an area—

''(A) for 2007—

''(i) if such year is not specified under subsection (c)(1)(D)(ii), an amount equal to the amount specified in subsection (c)(1)(C) for the area for 2006—

''(I) first adjusted by the rescaling factor for 2006 for the area (as made available by the Secretary in the announcement of the rates on April 4, 2005, under subsection (b)(1), but excluding any national adjustment factors for coding intensity and risk adjustment budget neutrality that were included in such factor); and

''(II) then increased by the national per capita MA growth percentage, described in subsection (c)(6) for 2007, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004;

''(ii) if such year is specified under subsection (c)(1)(D)(ii), an amount equal to the greater of—

''(I) the amount determined under clause (i) for the area for the year; or

''(II) the amount specified in subsection (c)(1)(D) for the area for the year; and

''(B) for a subsequent year—

''(i) if such year is not specified under subsection (c)(1)(D)(ii), an amount equal to the amount determined under this paragraph for the area for the previous year (determined without regard to paragraph (2)), increased by the national per capita MA growth percentage, described in subsection (c)(6) for that succeeding year, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004; and

''(ii) if such year is specified under subsection (c)(1)(D)(ii), an amount equal to the greater of—

''(I) the amount determined under clause (i) for the area for the year; or

''(II) the amount specified in subsection (c)(1)(D) for the area for the year.

''(2) PHASE-OUT OF BUDGET NEUTRALITY FACTOR.—

''(A) IN GENERAL.—Except as provided in subparagraph (D), in the case of 2007 through 2010, the applicable amount determined under paragraph (1) shall be multiplied by a factor equal to 1 plus the product of—

''(i) the percent determined under subparagraph (B) for the year; and

''(ii) the applicable phase-out factor for the year under subparagraph (C).

''(B) PERCENT DETERMINED.—

''(i) IN GENERAL.—For purposes of subparagraph (A)(i), subject to clause (iv), the percent determined under this subparagraph for

a year is a percent equal to a fraction the numerator of which is described in clause (ii) and the denominator of which is described in clause (iii).

''(ii) NUMERATOR BASED ON DIFFERENCE BETWEEN DEMOGRAPHIC RATE AND RISK RATE.—

''(I) IN GENERAL.—The numerator described in this clause is an amount equal to the amount by which the demographic rate described in subclause (II) exceeds the risk rate described in subclause (III).

''(II) DEMOGRAPHIC RATE.—The demographic rate described in this subclause is the Secretary's estimate of the total payments that would have been made under this part in the year if all the monthly payment amounts for all MA plans were equal to 1/12 of the annual MA capitation rate under subsection (c)(1) for the area and year, adjusted pursuant to subsection (a)(1)(C).

''(III) RISK RATE.—The risk rate described in this subclause is the Secretary's estimate of the total payments that would have been made under this part in the year if all the monthly payment amounts for all MA plans were equal to the amount described in subsection (j)(1)(A) (determined as if this paragraph had not applied) under subsection (j) for the area and year, adjusted pursuant to subsection (a)(1)(C).

''(iii) DENOMINATOR BASED ON RISK RATE.—The denominator described in this clause is equal to the total amount estimated for the year under clause (ii)(III).

''(iv) REQUIREMENTS.—In estimating the amounts under the previous clauses, the Secretary shall—

''(I) use a complete set of the most recent and representative Medicare Advantage risk scores under subsection (a)(3) that are available from the risk adjustment model announced for the year;

''(II) adjust the risk scores to reflect changes in treatment and coding practices in the fee-for-service sector;

''(III) adjust the risk scores for differences in coding patterns between Medicare Advantage plans and providers under the original medicare fee-for-service program under parts A and B to the extent that the Secretary has identified such differences, as required in subsection (a)(1)(C);

''(IV) as necessary, adjust the risk scores for late data submitted by Medicare Advantage organizations;

''(V) as necessary, adjust the risk scores for lagged cohorts; and

''(VI) as necessary, adjust the risk scores for changes in enrollment in Medicare Advantage plans during the year.

''(v) AUTHORITY.—In computing such amounts the Secretary may take into account the estimated health risk of enrollees in preferred provider organization plans (including MA regional plans) for the year.

''(C) APPLICABLE PHASE-OUT FACTOR.—For purposes of subparagraph (A)(ii), the term 'applicable phase-out factor' means—

''(i) for 2007, 0.55;

''(ii) for 2008, 0.40;

''(iii) for 2009, 0.25; and

''(iv) for 2010, 0.05.

''(D) TERMINATION OF APPLICATION.—Subparagraph (A) shall not apply in a year if the amount estimated under subparagraph (B)(ii)(III) for the year is equal to or greater than the amount estimated under subparagraph (B)(ii)(II) for the year.

''(3) NO REVISION IN PERCENT.—

''(A) IN GENERAL.—The Secretary may not make any adjustment to the percent determined under paragraph (2)(B) for any year.

''(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of the Secretary to make adjustments to the applicable amounts determined under paragraph (1) as appropriate for purposes of updating data or for purposes of adopting an improved risk adjustment methodology.''.

(b) REFINEMENTS TO HEALTH STATUS ADJUSTMENT.—Section 1853(a)(1)(C) of such Act (42 U.S.C. 1395w–23) is amended—

(1) by designating the matter after the heading as a clause (i) with the following heading: ''IN GENERAL.—'' and indenting appropriately; and

(2) by adding at the end the following:

''(ii) APPLICATION DURING PHASE-OUT OF BUDGET NEUTRALITY FACTOR.—For 2006 through 2010:

''(I) In applying the adjustment under clause (i) for health status to payment amounts, the Secretary shall ensure that such adjustment reflects changes in treatment and coding practices in the fee-for-service sector and reflects differences in coding patterns between Medicare Advantage plans and providers under part A and B to the extent that the Secretary has identified such differences.

''(II) In order to ensure payment accuracy, the Secretary shall conduct an analysis of the differences described in subclause (I). The Secretary shall complete such analysis by a date necessary to ensure that the results of such analysis are incorporated into the risk scores only for 2008, 2009, and 2010. In conducting such analysis, the Secretary shall use data submitted with respect to 2004 and subsequent years, as available.''.

**SEC. 5302. RURAL PACE PROVIDER GRANT PROGRAM.**

(a) DEFINITIONS.—In this section:

(1) CMS.—The term ''CMS'' means the Centers for Medicare & Medicaid Services.

(2) PACE PROGRAM.—The term ''PACE program'' has the meaning given that term in sections 1894(a)(2) and 1934(a)(2) of the Social Security Act (42 U.S.C. 1395eee(a)(2); 1396u–4(a)(2)).

(3) PACE PROVIDER.—The term ''PACE provider'' has the meaning given that term in section 1894(a)(3) or 1934(a)(3) of the Social Security Act (42 U.S.C. 1395eee(a)(3); 1396u–4(a)(3)).

(4) RURAL AREA.—The term ''rural area'' has the meaning given that term in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D)).

(5) RURAL PACE PILOT SITE.—The term ''rural PACE pilot site'' means a PACE provider that has been approved to provide services in a geographic service area that is, in whole or in part, a rural area, and that has received a site development grant under this section.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) SITE DEVELOPMENT GRANTS AND TECHNICAL ASSISTANCE PROGRAM.—

(1) SITE DEVELOPMENT GRANTS.—

(A) IN GENERAL.—The Secretary shall establish a process and criteria to award site development grants to qualified PACE providers that have been approved to serve a rural area.

(B) AMOUNT PER AWARD.—A site development grant awarded under subparagraph (A) to any individual rural PACE pilot site shall not exceed $750,000.

(C) NUMBER OF AWARDS.—Not more than 15 rural PACE pilot sites shall be awarded a site development grant under subparagraph (A).

(D) USE OF FUNDS.—Funds made available under a site development grant awarded under subparagraph (A) may be used for the following expenses only to the extent such expenses are incurred in relation to establishing or delivering PACE program services in a rural area:

(i) Feasibility analysis and planning.

(ii) Interdisciplinary team development.

(iii) Development of a provider network, including contract development.

(iv) Development or adaptation of claims processing systems.

(v) Preparation of special education and outreach efforts required for the PACE program.

(vi) Development of expense reporting required for calculation of outlier payments or reconciliation processes.

(vii) Development of any special quality of care or patient satisfaction data collection efforts.

(viii) Establishment of a working capital fund to sustain fixed administrative, facility, or other fixed costs until the provider reaches sufficient enrollment size.

(ix) Startup and development costs incurred prior to the approval of the rural PACE pilot site's PACE provider application by CMS.

(x) Any other efforts determined by the rural PACE pilot site to be critical to its successful startup, as approved by the Secretary.

(E) APPROPRIATION.—

(i) IN GENERAL.—Out of funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out this subsection for fiscal year 2006, $7,500,000.

(ii) AVAILABILITY.—Funds appropriated under clause (i) shall remain available for expenditure through fiscal year 2008.

(2) TECHNICAL ASSISTANCE PROGRAM.—The Secretary shall establish a technical assistance program to provide—

(A) outreach and education to State agencies and provider organizations interested in establishing PACE programs in rural areas; and

(B) technical assistance necessary to support rural PACE pilot sites.

(c) COST OUTLIER PROTECTION FOR RURAL PACE PILOT SITES.—

(1) ESTABLISHMENT OF FUND FOR REIMBURSEMENT OF OUTLIER COSTS.—Notwithstanding any other provision of law, the Secretary shall establish an outlier fund to reimburse rural PACE pilot sites for recognized outlier costs (as defined in paragraph (3)) incurred for eligible outlier participants (as defined in paragraph (2)) in an amount, subject to paragraph (4), equal to 80 percent of the amount by which the recognized outlier costs exceeds $50,000.

(2) ELIGIBLE OUTLIER PARTICIPANT.—For purposes of this subsection, the term ''eligible outlier participant'' means a PACE program eligible individual (as defined in sections 1894(a)(5) and 1934(a)(5) of the Social Security Act (42 U.S.C. 1395eee(a)(5); 1396u–4(a)(5) who resides in a rural area and with respect to whom the rural PACE pilot site incurs more than $50,000 in recognized costs in a 12-month period.

(3) RECOGNIZED OUTLIER COSTS DEFINED.—

(A) IN GENERAL.—For purposes of this subsection, the term ''recognized outlier costs'' means, with respect to services furnished to an eligible outlier participant by a rural PACE pilot site, the least of the following (as documented by the site to the satisfaction of the Secretary) for the provision of inpatient and related physician and ancillary services for the eligible outlier participant in a given 12-month period:

(i) If the services are provided under a contract between the pilot site and the provider, the payment rate specified under the contract.

(ii) The payment rate established under the original medicare fee-for-service program for such service.

(iii) The amount actually paid for the services by the pilot site.

(B) INCLUSION IN ONLY ONE PERIOD.—Recognized outlier costs may not be included in more than one 12-month period.

(3) OUTLIER EXPENSE PAYMENT.—

(A) PAYMENT FOR OUTLIER COSTS.—Subject to subparagraph (B), in the case of a rural PACE pilot site that has incurred outlier costs for an eligible outlier participant, the rural PACE pilot site shall receive an outlier expense payment equal to 80 percent of such costs that exceed $50,000.

(4) LIMITATIONS.—

(A) COSTS INCURRED PER ELIGIBLE OUTLIER PARTICIPANT.—The total amount of outlier expense payments made under this subsection to a rural PACE pilot site with respect to an eligible outlier participant for any 12-month period shall not exceed $100,000 for the 12-month period used to calculate the payment.

(B) COSTS INCURRED PER PROVIDER.—No rural PACE pilot site may receive more than $500,000 in total outlier expense payments in a 12-month period.

(C) LIMITATION OF OUTLIER COST REIMBURSEMENT PERIOD.—A rural PACE pilot site shall only receive outlier expense payments under this subsection with respect to costs incurred during the first 3 years of the site's operation.

(5) REQUIREMENT TO ACCESS RISK RESERVES PRIOR TO PAYMENT.—A rural PACE pilot site shall access and exhaust any risk reserves held or arranged for the provider (other than revenue or reserves maintained to satisfy the requirements of section 460.80(c) of title 42, Code of Federal Regulations) and any working capital established through a site development grant awarded under subsection (b)(1), prior to receiving any payment from the outlier fund.

(6) APPLICATION.—In order to receive an outlier expense payment under this subsection with respect to an eligible outlier participant, a rural PACE pilot site shall submit an application containing—

(A) documentation of the costs incurred with respect to the participant;

(B) a certification that the site has complied with the requirements under paragraph (4); and

(C) such additional information as the Secretary may require.

(7) APPROPRIATION.—

(A) IN GENERAL.—Out of funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out this subsection for fiscal year 2006, $10,000,000.

(B) AVAILABILITY.—Funds appropriated under subparagraph (A) shall remain available for expenditure through fiscal year 2010.

(d) EVALUATION OF PACE PROVIDERS SERVING RURAL SERVICE AREAS.—Not later than 60 months after the date of enactment of this Act, the Secretary shall submit a report to Congress containing an evaluation of the experience of rural PACE pilot sites.

(e) AMOUNTS IN ADDITION TO PAYMENTS UNDER SOCIAL SECURITY ACT.—Any amounts paid under the authority of this section to a PACE provider shall be in addition to payments made to the provider under section 1894 or 1934 of the Social Security Act (42 U.S.C. 1395eee; 1396u–4).

## TITLE VI—MEDICAID AND SCHIP

### Subtitle A—Medicaid

### CHAPTER 1—PAYMENT FOR PRESCRIPTION DRUGS

**SEC. 6001. FEDERAL UPPER PAYMENT LIMIT FOR MULTIPLE SOURCE DRUGS AND OTHER DRUG PAYMENT PROVISIONS.**

(a) MODIFICATION OF FEDERAL UPPER PAYMENT LIMIT FOR MULTIPLE SOURCE DRUGS; DEFINITION OF MULTIPLE SOURCE DRUGS.—Section 1927 of the Social Security Act (42 U.S.C. 1396r–8) is amended—

(1) in subsection (e)(4)—

(A) by striking ''The Secretary'' and inserting ''Subject to paragraph (5), the Secretary''; and

(B) by inserting ''(or, effective January 1, 2007, two or more)'' after ''three or more'';

(2) by adding at the end of subsection (e) the following new paragraph:

''(5) USE OF AMP IN UPPER PAYMENT LIMITS.—Effective January 1, 2007, in applying the Federal upper reimbursement limit under paragraph (4) and section 447.332(b) of title 42 of the Code of Federal Regulations, the Secretary shall substitute 250 percent of the average manufacturer price (as computed without regard to customary prompt pay discounts extended to wholesalers) for 150 percent of the published price.'';

(3) in subsection (k)(7)(A)(i), in the matter preceding subclause (I), by striking ''are 2 or more drug products'' and inserting ''at least 1 other drug product''; and

(4) in subclauses (I), (II), and (III) of subsection (k)(7)(A)(i), by striking ''are'' and inserting ''is'' each place it appears.

(b) DISCLOSURE OF PRICE INFORMATION TO STATES AND THE PUBLIC.—Subsection (b)(3) of such section is amended—

(1) in subparagraph (A)—

(A) in clause (i), by inserting ''month of a'' after ''last day of each''; and

(B) by adding at the end the following: ''Beginning July 1, 2006, the Secretary shall provide on a monthly basis to States under subparagraph (D)(iv) the most recently reported average manufacturer prices for single source drugs and for multiple source drugs and shall, on at least a quarterly basis, update the information posted on the website under subparagraph (D)(v).''; and

(2) in subparagraph (D)—

(A) by striking ''and'' at the end of clause (ii);

(B) by striking the period at the end of clause (iii) and inserting a comma; and

(C) by inserting after clause (iii) the following new clauses:

''(iv) to States to carry out this title, and

''(v) to the Secretary to disclose (through a website accessible to the public) average manufacturer prices.''.

(c) DEFINITION OF AVERAGE MANUFACTURER PRICE.—

(1) EXCLUSION OF CUSTOMARY PROMPT PAY DISCOUNTS EXTENDED TO WHOLESALERS.—Subsection (k)(1) of such section is amended—

(A) by striking ''The term'' and inserting the following:

''(A) IN GENERAL.—Subject to subparagraph (B), the term'';

(B) by striking '', after deducting customary prompt pay discounts''; and

(C) by adding at the end the following:

''(B) EXCLUSION OF CUSTOMARY PROMPT PAY DISCOUNTS EXTENDED TO WHOLESALERS.—The average manufacturer price for a covered outpatient drug shall be determined without regard to customary prompt pay discounts extended to wholesalers.''.

(2) MANUFACTURER REPORTING OF PROMPT PAY DISCOUNTS.—Subsection (b)(3)(A)(i) of such section is amended by inserting '', customary prompt pay discounts extended to wholesalers,'' after ''(k)(1))''.

(3) REQUIREMENT TO PROMULGATE REGULATION.—

(A) INSPECTOR GENERAL RECOMMENDATIONS.—Not later than June 1, 2006, the Inspector General of the Department of Health and Human Services shall—

(i) review the requirements for, and manner in which, average manufacturer prices are determined under section 1927 of the Social Security Act, as amended by this section; and

(ii) shall submit to the Secretary of Health and Human Services and Congress such recommendations for changes in such requirements or manner as the Inspector General determines to be appropriate.

(B) DEADLINE FOR PROMULGATION.—Not later than July 1, 2007, the Secretary of Health and Human Services shall promulgate a regulation that clarifies the requirements for, and manner in which, average manufacturer prices are determined under section 1927 of the Social Security Act, taking into consideration the recommendations submitted to the Secretary in accordance with subparagraph (A)(ii).

(d) EXCLUSION OF SALES AT A NOMINAL PRICE FROM DETERMINATION OF BEST PRICE.—

(1) MANUFACTURER REPORTING OF SALES.—Subsection (b)(3)(A)(iii) of such section is amended by inserting before the period at the end the following: '', and, for calendar quarters beginning on or after January 1, 2007 and only with respect to the information described in subclause (III), for covered outpatient drugs''.

(2) LIMITATION ON SALES AT A NOMINAL PRICE.—Subsection (c)(1) of such section is amended by adding at the end the following new subparagraph:

''(D) LIMITATION ON SALES AT A NOMINAL PRICE.—

''(i) IN GENERAL.—For purposes of subparagraph (C)(ii)(III) and subsection (b)(3)(A)(iii)(III), only sales by a manufacturer of covered outpatient drugs at nominal prices to the following shall be considered to be sales at a nominal price or merely nominal in amount:

''(I) A covered entity described in section 340B(a)(4) of the Public Health Service Act.

''(II) An intermediate care facility for the mentally retarded.

''(III) A State-owned or operated nursing facility.

''(IV) Any other facility or entity that the Secretary determines is a safety net provider to which sales of such drugs at a nominal price would be appropriate based on the factors described in clause (ii).

''(ii) FACTORS.—The factors described in this clause with respect to a facility or entity are the following:

''(I) The type of facility or entity.

''(II) The services provided by the facility or entity.

''(III) The patient population served by the facility or entity.

''(IV) The number of other facilities or entities eligible to purchase at nominal prices in the same service area.

''(iii) NONAPPLICATION.—Clause (i) shall not apply with respect to sales by a manufacturer at a nominal price of covered outpatient drugs pursuant to a master agreement under section 8126 of title 38, United States Code.''.

(e) RETAIL SURVEY PRICES; STATE PAYMENT AND UTILIZATION RATES; AND PERFORMANCE RANKINGS.—Such section is further amended by inserting after subsection (e) the following new subsection:

''(f) SURVEY OF RETAIL PRICES; STATE PAYMENT AND UTILIZATION RATES; AND PERFORMANCE RANKINGS.—

''(1) SURVEY OF RETAIL PRICES.—

''(A) USE OF VENDOR.—The Secretary may contract services for—

''(i) the determination on a monthly basis of retail survey prices for covered outpatient drugs that represent a nationwide average of consumer purchase prices for such drugs, net of all discounts and rebates (to the extent any information with respect to such discounts and rebates is available); and

''(ii) the notification of the Secretary when a drug product that is therapeutically and pharmaceutically equivalent and bioequivalent becomes generally available.

''(B) SECRETARY RESPONSE TO NOTIFICATION OF AVAILABILITY OF MULTIPLE SOURCE PRODUCTS.—If contractor notifies the Secretary under subparagraph (A)(ii) that a drug product described in such subparagraph has become generally available, the Secretary shall make a determination, within 7 days

after receiving such notification, as to whether the product is now described in subsection (e)(4).

''(C) USE OF COMPETITIVE BIDDING.—In contracting for such services, the Secretary shall competitively bid for an outside vendor that has a demonstrated history in—

''(i) surveying and determining, on a representative nationwide basis, retail prices for ingredient costs of prescription drugs;

''(ii) working with retail pharmacies, commercial payers, and States in obtaining and disseminating such price information; and

''(iii) collecting and reporting such price information on at least a monthly basis.

In contracting for such services, the Secretary may waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this subsection, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

''(D) ADDITIONAL PROVISIONS.—A contract with a vendor under this paragraph shall include such terms and conditions as the Secretary shall specify, including the following:

''(i) The vendor must monitor the marketplace and report to the Secretary each time there is a new covered outpatient drug generally available.

''(ii) The vendor must update the Secretary no less often than monthly on the retail survey prices for covered outpatient drugs.

''(iii) The contract shall be effective for a term of 2 years.

''(E) AVAILABILITY OF INFORMATION TO STATES.—Information on retail survey prices obtained under this paragraph, including applicable information on single source drugs, shall be provided to States on at least a monthly basis. The Secretary shall devise and implement a means for providing access to each State agency designated under section 1902(a)(5) with responsibility for the administration or supervision of the administration of the State plan under this title of the retail survey price determined under this paragraph.

''(2) ANNUAL STATE REPORT.—Each State shall annually report to the Secretary information on—

''(A) the payment rates under the State plan under this title for covered outpatient drugs;

''(B) the dispensing fees paid under such plan for such drugs; and

''(C) utilization rates for noninnovator multiple source drugs under such plan.

''(3) ANNUAL STATE PERFORMANCE RANKINGS.—

''(A) COMPARATIVE ANALYSIS.—The Secretary annually shall compare, for the 50 most widely prescribed drugs identified by the Secretary, the national retail sales price data (collected under paragraph (1)) for such drugs with data on prices under this title for each such drug for each State.

''(B) AVAILABILITY OF INFORMATION.—The Secretary shall submit to Congress and the States full information regarding the annual rankings made under subparagraph (A).

''(4) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services $5,000,000 for each of fiscal years 2006 through 2010 to carry out this subsection.''.

(f) MISCELLANEOUS AMENDMENTS.—

(1) IN GENERAL.—Sections 1927(g)(1)(B)(i)(II) and 1861(t)(2)(B)(ii)(I) of such Act are each amended by inserting ''(or its successor publications)'' after ''United States Pharmacopoeia-Drug Information''.

(2) PAPERWORK REDUCTION.—The last sentence of section 1927(g)(2)(A)(ii) of such Act (42 U.S.C. 1396r–8(g)(2)(A)(ii)) is amended by inserting before the period at the end the following: '', or to require verification of the offer to provide consultation or a refusal of such offer''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(g) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall take effect on January 1, 2007, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

**SEC. 6002. COLLECTION AND SUBMISSION OF UTILIZATION DATA FOR CERTAIN PHYSICIAN ADMINISTERED DRUGS.**

(a) IN GENERAL.—Section 1927(a) of the Social Security Act (42 U.S.C. 1396r–8(a)) is amended by adding at the end the following new paragraph:

''(7) REQUIREMENT FOR SUBMISSION OF UTILIZATION DATA FOR CERTAIN PHYSICIAN ADMINISTERED DRUGS.—

''(A) SINGLE SOURCE DRUGS.—In order for payment to be available under section 1903(a) for a covered outpatient drug that is a single source drug that is physician administered under this title (as determined by the Secretary), and that is administered on or after January 1, 2006, the State shall provide for the collection and submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section for drugs administered for which payment is made under this title.

''(B) MULTIPLE SOURCE DRUGS.—

''(i) IDENTIFICATION OF MOST FREQUENTLY PHYSICIAN ADMINISTERED MULTIPLE SOURCE DRUGS.—Not later than January 1, 2007, the Secretary shall publish a list of the 20 physician administered multiple source drugs that the Secretary determines have the highest dollar volume of physician administered drugs dispensed under this title. The Secretary may modify such list from year to year to reflect changes in such volume.

''(ii) REQUIREMENT.—In order for payment to be available under section 1903(a) for a covered outpatient drug that is a multiple source drug that is physician administered (as determined by the Secretary), that is on the list published under clause (i), and that is administered on or after January 1, 2008, the State shall provide for the submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section.

''(C) USE OF NDC CODES.—Not later than January 1, 2007, the information shall be submitted under subparagraphs (A) and (B)(ii) using National Drug Code codes unless the Secretary specifies that an alternative coding system should be used.

''(D) HARDSHIP WAIVER.—The Secretary may delay the application of subparagraph (A) or (B)(ii), or both, in the case of a State to prevent hardship to States which require additional time to implement the reporting system required under the respective subparagraph.''.

(b) LIMITATION ON PAYMENT.—Section 1903(i)(10) of such Act (42 U.S.C. 1396b(i)(10)), is amended—

(1) by striking ''and'' at the end of subparagraph (A);

(2) by striking ''or'' at the end of subparagraph (B) and inserting ''and''; and

(3) by adding at the end the following new subparagraph:

''(C) with respect to covered outpatient drugs described in section 1927(a)(7), unless information respecting utilization data and coding on such drugs that is required to be submitted under such section is submitted in accordance with such section; or''.

**SEC. 6003. IMPROVED REGULATION OF DRUGS SOLD UNDER A NEW DRUG APPLICATION APPROVED UNDER SECTION 505(c) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.**

(a) INCLUSION WITH OTHER REPORTED AVERAGE MANUFACTURER AND BEST PRICES.—Section 1927(b)(3)(A) of the Social Security Act (42 U.S.C. 1396r–8(b)(3)(A)) is amended—

(1) by striking clause (i) and inserting the following:

''(i) not later than 30 days after the last day of each rebate period under the agreement—

''(I) on the average manufacturer price (as defined in subsection (k)(1)) for covered outpatient drugs for the rebate period under the agreement (including for all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act); and

''(II) for single source drugs and innovator multiple source drugs (including all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act), on the manufacturer's best price (as defined in subsection (c)(1)(C)) for such drugs for the rebate period under the agreement;''; and

(2) in clause (ii), by inserting ''(including for such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act)'' after ''drugs''.

(b) CONFORMING AMENDMENTS.—Section 1927 of such Act (42 U.S.C. 1396r–8) is amended—

(1) in subsection (c)(1)(C)—

(A) in clause (i), in the matter preceding subclause (I), by inserting after ''or innovator multiple source drug of a manufacturer'' the following: ''(including the lowest price available to any entity for any such drug of a manufacturer that is sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act)''; and

(B) in clause (ii)—

(i) in subclause (II), by striking ''and'' at the end;

(ii) in subclause (III), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(IV) in the case of a manufacturer that approves, allows, or otherwise permits any other drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act, shall be inclusive of the lowest price for such authorized drug available from the manufacturer during the rebate period to any manufacturer, wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding those prices described in subclauses (I) through (IV) of clause (i).''; and

(2) in subsection (k), as amended by section 6001(c)(1), by adding at the end the following:

''(C) INCLUSION OF SECTION 505(c) DRUGS.—In the case of a manufacturer that approves, allows, or otherwise permits any drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act, such term shall be inclusive of the average price paid for such drug by wholesalers for drugs distributed to the retail pharmacy class of trade.''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on January 1, 2007.

**SEC. 6004. CHILDREN'S HOSPITAL PARTICIPATION IN SECTION 340B DRUG DISCOUNT PROGRAM.**

(a) IN GENERAL.—Section 1927(a)(5)(B) of the Social Security Act (42 U.S.C. 1396r–

8(a)(5)(B)) is amended by inserting before the period at the end the following: ''and a children's hospital described in section 1886(d)(1)(B)(iii) which meets the requirements of clauses (i) and (iii) of section 340B(b)(4)(L) of the Public Health Service Act and which would meet the requirements of clause (ii) of such section if that clause were applied by taking into account the percentage of care provided by the hospital to patients eligible for medical assistance under a State plan under this title''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to drugs purchased on or after the date of the enactment of this Act.

## CHAPTER 2—LONG-TERM CARE UNDER MEDICAID

### Subchapter A—Reform of Asset Transfer Rules

**SEC. 6011. LENGTHENING LOOK-BACK PERIOD; CHANGE IN BEGINNING DATE FOR PERIOD OF INELIGIBILITY.**

(a) LENGTHENING LOOK-BACK PERIOD FOR ALL DISPOSALS TO 5 YEARS.—Section 1917(c)(1)(B)(i) of the Social Security Act (42 U.S.C. 1396p(c)(1)(B)(i)) is amended by inserting ''or in the case of any other disposal of assets made on or after the date of the enactment of the Deficit Reduction Act of 2005'' before '', 60 months''.

(b) CHANGE IN BEGINNING DATE FOR PERIOD OF INELIGIBILITY.—Section 1917(c)(1)(D) of such Act (42 U.S.C. 1396p(c)(1)(D)) is amended—

(1) by striking ''(D) The date'' and inserting ''(D)(i) In the case of a transfer of asset made before the date of the enactment of the Deficit Reduction Act of 2005, the date''; and

(2) by adding at the end the following new clause:

''(ii) In the case of a transfer of asset made on or after the date of the enactment of the Deficit Reduction Act of 2005, the date specified in this subparagraph is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers made on or after the date of the enactment of this Act.

(d) AVAILABILITY OF HARDSHIP WAIVERS.—Each State shall provide for a hardship waiver process in accordance with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C. 1396p(c)(2)(D))—

(1) under which an undue hardship exists when application of the transfer of assets provision would deprive the individual—

(A) of medical care such that the individual's health or life would be endangered; or

(B) of food, clothing, shelter, or other necessities of life; and

(2) which provides for—

(A) notice to recipients that an undue hardship exception exists;

(B) a timely process for determining whether an undue hardship waiver will be granted; and

(C) a process under which an adverse determination can be appealed.

(e) ADDITIONAL PROVISIONS ON HARDSHIP WAIVERS.—

(1) APPLICATION BY FACILITY.—Section 1917(c)(2) of the Social Security Act (42 U.S.C. 1396p(c)(2)) is amended—

(A) by striking the semicolon at the end of subparagraph (D) and inserting a period; and

(B) by adding after and below such subparagraph the following:

''The procedures established under subparagraph (D) shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.''.

(2) AUTHORITY TO MAKE BED HOLD PAYMENTS FOR HARDSHIP APPLICANTS.—Such section is further amended by adding at the end the following: ''While an application for an undue hardship waiver is pending under subparagraph (D) in the case of an individual who is a resident of a nursing facility, if the application meets such criteria as the Secretary specifies, the State may provide for payments for nursing facility services in order to hold the bed for the individual at the facility, but not in excess of payments for 30 days.''.

**SEC. 6012. DISCLOSURE AND TREATMENT OF ANNUITIES.**

(a) IN GENERAL.—Section 1917 of the Social Security Act (42 U.S.C. 1396p) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e)(1) In order to meet the requirements of this section for purposes of section 1902(a)(18), a State shall require, as a condition for the provision of medical assistance for services described in subsection (c)(1)(C)(i) (relating to long-term care services) for an individual, the application of the individual for such assistance (including any recertification of eligibility for such assistance) shall disclose a description of any interest the individual or community spouse has in an annuity (or similar financial instrument, as may be specified by the Secretary), regardless of whether the annuity is irrevocable or is treated as an asset. Such application or recertification form shall include a statement that under paragraph (2) the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of the provision of such medical assistance.

''(2)(A) In the case of disclosure concerning an annuity under subsection (c)(1)(F), the State shall notify the issuer of the annuity of the right of the State under such subsection as a preferred remainder beneficiary in the annuity for medical assistance furnished to the individual. Nothing in this paragraph shall be construed as preventing such an issuer from notifying persons with any other remainder interest of the State's remainder interest under such subsection.

''(B) In the case of such an issuer receiving notice under subparagraph (A), the State may require the issuer to notify the State when there is a change in the amount of income or principal being withdrawn from the amount that was being withdrawn at the time of the most recent disclosure described in paragraph (1). A State shall take such information into account in determining the amount of the State's obligations for medical assistance or in the individual's eligibility for such assistance.

''(3) The Secretary may provide guidance to States on categories of transactions that may be treated as a transfer of asset for less than fair market value.

''(4) Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1).''.

(b) REQUIREMENT FOR STATE TO BE NAMED AS A REMAINDER BENEFICIARY.—Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), is amended by adding at the end the following:

''(F) For purposes of this paragraph, the purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless—

''(i) the State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant under this title; or

''(ii) the State is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.''.

(c) INCLUSION OF TRANSFERS TO PURCHASE BALLOON ANNUITIES.—Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsection (b), is amended by adding at the end the following:

''(G) For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services under this title unless—

''(i) the annuity is—

''(I) an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or

''(II) purchased with proceeds from—

''(aa) an account or trust described in subsection (a), (c), (p) of section 408 of such Code;

''(bb) a simplified employee pension (within the meaning of section 408(k) of such Code); or

''(cc) a Roth IRA described in section 408A of such Code; or

''(ii) the annuity—

''(I) is irrevocable and nonassignable;

''(II) is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and

''(III) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions (including the purchase of an annuity) occurring on or after the date of the enactment of this Act.

**SEC. 6013. APPLICATION OF "INCOME-FIRST" RULE IN APPLYING COMMUNITY SPOUSE'S INCOME BEFORE ASSETS IN PROVIDING SUPPORT OF COMMUNITY SPOUSE.**

(a) IN GENERAL.—Section 1924(d) of the Social Security Act (42 U.S.C. 1396r–5(d)) is amended by adding at the end the following new subparagraph:

''(6) APPLICATION OF 'INCOME FIRST' RULE TO REVISION OF COMMUNITY SPOUSE RESOURCE ALLOWANCE.—For purposes of this subsection and subsections (c) and (e), a State must consider that all income of the institutionalized spouse that could be made available to a community spouse, in accordance with the calculation of the community spouse monthly income allowance under this subsection, has been made available before the State allocates to the community spouse an amount of resources adequate to provide the difference between the minimum monthly maintenance needs allowance and all income available to the community spouse.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transfers and allocations made on or after the date of the enactment of this Act by individuals who become institutionalized spouses on or after such date.

**SEC. 6014. DISQUALIFICATION FOR LONG-TERM CARE ASSISTANCE FOR INDIVIDUALS WITH SUBSTANTIAL HOME EQUITY.**

(a) IN GENERAL.—Section 1917 of the Social Security Act, as amended by section 6012(a), is further amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f)(1)(A) Notwithstanding any other provision of this title, subject to subparagraphs (B) and (C) of this paragraph and paragraph (2), in determining eligibility of an individual for medical assistance with respect to nursing facility services or other long-term care services, the individual shall not be eligible for such assistance if the individual's equity interest in the individual's home exceeds $500,000.

''(B) A State may elect, without regard to the requirements of section 1902(a)(1) (relating to statewideness) and section 1902(a)(10)(B) (relating to comparability), to apply subparagraph (A) by substituting for '$500,000', an amount that exceeds such amount, but does not exceed $750,000.

''(C) The dollar amounts specified in this paragraph shall be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000.

''(2) Paragraph (1) shall not apply with respect to an individual if—

''(A) the spouse of such individual, or

''(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614,

is lawfully residing in the individual's home.

''(3) Nothing in this subsection shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

''(4) The Secretary shall establish a process whereby paragraph (1) is waived in the case of a demonstrated hardship.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who are determined eligible for medical assistance with respect to nursing facility services or other long-term care services based on an application filed on or after January 1, 2006.

**SEC. 6015. ENFORCEABILITY OF CONTINUING CARE RETIREMENT COMMUNITIES (CCRC) AND LIFE CARE COMMUNITY ADMISSION CONTRACTS.**

(a) ADMISSION POLICIES OF NURSING FACILITIES.—Section 1919(c)(5) of the Social Security Act (42 U.S.C. 1396r(c)(5)) is amended—

(1) in subparagraph (A)(i)(II), by inserting ''subject to clause (v),'' after ''(II)''; and

(2) by adding at the end of subparagraph (B) the following new clause:

''(v) TREATMENT OF CONTINUING CARE RETIREMENT COMMUNITIES ADMISSION CONTRACTS.—Notwithstanding subclause (II) of subparagraph (A)(i), subject to subsections (c) and (d) of section 1924, contracts for admission to a State licensed, registered, certified, or equivalent continuing care retirement community or life care community, including services in a nursing facility that is part of such community, may require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance.''.

(b) TREATMENT OF ENTRANCE FEES.—Section 1917 of such Act (42 U.S.C. 1396p), as amended by sections 6012(a) and 6014(a), is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

''(g) TREATMENT OF ENTRANCE FEES OF INDIVIDUALS RESIDING IN CONTINUING CARE RETIREMENT COMMUNITIES.—

''(1) IN GENERAL.—For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this title, the rules specified in paragraph (2) shall apply to individuals residing in continuing care retirement communities or life care communities that collect an entrance fee on admission from such individuals.

''(2) TREATMENT OF ENTRANCE FEE.—For purposes of this subsection, an individual's entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that—

''(A) the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

''(B) the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

''(C) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.''.

**SEC. 6016. ADDITIONAL REFORMS OF MEDICAID ASSET TRANSFER RULES.**

(a) REQUIREMENT TO IMPOSE PARTIAL MONTHS OF INELIGIBILITY.—Section 1917(c)(1)(E) of the Social Security Act (42 U.S.C. 1396p(c)(1)(E)) is amended by adding at the end the following:

''(iv) A State shall not round down, or otherwise disregard any fractional period of ineligibility determined under clause (i) or (ii) with respect to the disposal of assets.''.

(b) AUTHORITY FOR STATES TO ACCUMULATE MULTIPLE TRANSFERS INTO ONE PENALTY PERIOD.—Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsections (b) and (c) of section 6012, is amended by adding at the end the following:

''(H) Notwithstanding the preceding provisions of this paragraph, in the case of an individual (or individual's spouse) who makes multiple fractional transfers of assets in more than 1 month for less than fair market value on or after the applicable look-back date specified in subparagraph (B), a State may determine the period of ineligibility applicable to such individual under this paragraph by—

''(i) treating the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) during all months on or after the look-back date specified in subparagraph (B) as 1 transfer for purposes of clause (i) or (ii) (as the case may be) of subparagraph (E); and

''(ii) beginning such period on the earliest date which would apply under subparagraph (D) to any of such transfers.''.

(c) INCLUSION OF TRANSFER OF CERTAIN NOTES AND LOANS ASSETS.—Section 1917(c)(1) of such Act (42 U.S.C. 1396 p(c)(1)), as amended by subsection (b), is amended by adding at the end the following:

''(I) For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes funds used to purchase a promissory note, loan, or mortgage unless such note, loan, or mortgage—

''(i) has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration);

''(ii) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and

''(iii) prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan, or mortgage that does not satisfy the requirements of clauses (i) through (iii), the value of such note, loan, or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance for services described in subparagraph (C).''.

(d) INCLUSION OF TRANSFERS TO PURCHASE LIFE ESTATES.—Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsection (c), is amended by adding at the end the following:

''(J) For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least 1 year after the date of the purchase.''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to payments under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for calendar quarters beginning on or after the date of enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) EXCEPTIONS.—The amendments made by this section shall not apply—

(A) to medical assistance provided for services furnished before the date of enactment;

(B) with respect to assets disposed of on or before the date of enactment of this Act; or

(C) with respect to trusts established on or before the date of enactment of this Act.

(3) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

**Subchapter B—Expanded Access to Certain Benefits**

**SEC. 6021. EXPANSION OF STATE LONG-TERM CARE PARTNERSHIP PROGRAM.**

(a) EXPANSION AUTHORITY.—

(1) IN GENERAL.—Section 1917(b) of the Social Security Act (42 U.S.C. 1396p(b)) is amended—

(A) in paragraph (1)(C)—

(i) in clause (ii), by inserting ''and which satisfies clause (iv), or which has a State plan amendment that provides for a qualified State long-term care insurance partnership (as defined in clause (iii))'' after ''1993,''; and

(ii) by adding at the end the following new clauses:

''(iii) For purposes of this paragraph, the term 'qualified State long-term care insurance partnership' means an approved State plan amendment under this title that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary

under a long-term care insurance policy if the following requirements are met:

''(I) The policy covers an insured who was a resident of such State when coverage first became effective under the policy.

''(II) The policy is a qualified long-term care insurance policy (as defined in section 7702B(b) of the Internal Revenue Code of 1986) issued not earlier than the effective date of the State plan amendment.

''(III) The policy meets the model regulations and the requirements of the model Act specified in paragraph (5).

''(IV) If the policy is sold to an individual who—

''(aa) has not attained age 61 as of the date of purchase, the policy provides compound annual inflation protection;

''(bb) has attained age 61 but has not attained age 76 as of such date, the policy provides some level of inflation protection; and

''(cc) has attained age 76 as of such date, the policy may (but is not required to) provide some level of inflation protection.

''(V) The State Medicaid agency under section 1902(a)(5) provides information and technical assistance to the State insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.

''(VI) The issuer of the policy provides regular reports to the Secretary, in accordance with regulations of the Secretary, that include notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.

''(VII) The State does not impose any requirement affecting the terms or benefits of such a policy unless the State imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

In the case of a long-term care insurance policy which is exchanged for another such policy, subclause (I) shall be applied based on the coverage of the first such policy that was exchanged. For purposes of this clause and paragraph (5), the term 'long-term care insurance policy' includes a certificate issued under a group insurance contract

''(iv) With respect to a State which had a State plan amendment approved as of May 14, 1993, such a State satisfies this clause for purposes of clause (ii) if the Secretary determines that the State plan amendment provides for consumer protection standards which are no less stringent than the consumer protection standards which applied under such State plan amendment as of December 31, 2005.

''(v) The regulations of the Secretary required under clause (iii)(VI) shall be promulgated after consultation with the National Association of Insurance Commissioners, issuers of long-term care insurance policies, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, and shall specify the type and format of the data and information to be reported and the frequency with which such reports are to be made. The Secretary, as appropriate, shall provide copies of the reports provided in accordance with that clause to the State involved.

''(vi) The Secretary, in consultation with other appropriate Federal agencies, issuers of long-term care insurance, the National Association of Insurance Commissioners, State insurance commissioners, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, shall develop recommendations for Congress to authorize and fund a uniform minimum data set to be reported electronically by all issuers of long-term care insurance policies under qualified State long-term care insurance partnerships to a secure, centralized electronic query and report-generating mechanism that the State, the Secretary, and other Federal agencies can access.''; and

(B) by adding at the end the following:

''(5)(A) For purposes of clause (iii)(III), the model regulations and the requirements of the model Act specified in this paragraph are:

''(i) In the case of the model regulation, the following requirements:

''(I) Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the model Act relating to such section 6A.

''(II) Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof.

''(III) Section 6C (relating to extension of benefits).

''(IV) Section 6D (relating to continuation or conversion of coverage).

''(V) Section 6E (relating to discontinuance and replacement of policies).

''(VI) Section 7 (relating to unintentional lapse).

''(VII) Section 8 (relating to disclosure), other than sections 8F, 8G, 8H, and 8I thereof.

''(VIII) Section 9 (relating to required disclosure of rating practices to consumer).

''(IX) Section 11 (relating to prohibitions against post-claims underwriting).

''(X) Section 12 (relating to minimum standards).

''(XI) Section 14 (relating to application forms and replacement coverage).

''(XII) Section 15 (relating to reporting requirements).

''(XIII) Section 22 (relating to filing requirements for marketing).

''(XIV) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C.

''(XV) Section 24 (relating to suitability).

''(XVI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

''(XVII) The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

''(XVIII) Section 29 (relating to standard format outline of coverage).

''(XIX) Section 30 (relating to requirement to deliver shopper's guide).

''(ii) In the case of the model Act, the following:

''(I) Section 6C (relating to preexisting conditions).

''(II) Section 6D (relating to prior hospitalization).

''(III) The provisions of section 8 relating to contingent nonforfeiture benefits.

''(IV) Section 6F (relating to right to return).

''(V) Section 6G (relating to outline of coverage).

''(VI) Section 6H (relating to requirements for certificates under group plans).

''(VII) Section 6J (relating to policy summary).

''(VIII) Section 6K (relating to monthly reports on accelerated death benefits).

''(IX) Section 7 (relating to incontestability period).

''(B) For purposes of this paragraph and paragraph (1)(C)—

''(i) the terms 'model regulation' and 'model Act' mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000);

''(ii) any provision of the model regulation or model Act listed under subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision; and

''(iii) with respect to a long-term care insurance policy issued in a State, the policy shall be deemed to meet applicable requirements of the model regulation or the model Act if the State plan amendment under paragraph (1)(C)(iii) provides that the State insurance commissioner for the State certifies (in a manner satisfactory to the Secretary) that the policy meets such requirements.

''(C) Not later than 12 months after the National Association of Insurance Commissioners issues a revision, update, or other modification of a model regulation or model Act provision specified in subparagraph (A), or of any provision of such regulation or Act that is substantively related to a provision specified in such subparagraph, the Secretary shall review the changes made to the provision, determine whether incorporating such changes into the corresponding provision specified in such subparagraph would improve qualified State long-term care insurance partnerships, and if so, shall incorporate the changes into such provision.''.

(2) STATE REPORTING REQUIREMENTS.—Nothing in clauses (iii)(VI) and (v) of section 1917(b)(1)(C) of the Social Security Act (as added by paragraph (1)) shall be construed as prohibiting a State from requiring an issuer of a long-term care insurance policy sold in the State (regardless of whether the policy is issued under a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of such Act) to require the issuer to report information or data to the State that is in addition to the information or data required under such clauses.

(3) EFFECTIVE DATE.—A State plan amendment that provides for a qualified State long-term care insurance partnership under the amendments made by paragraph (1) may provide that such amendment is effective for long-term care insurance policies issued on or after a date, specified in the amendment, that is not earlier than the first day of the first calendar quarter in which the plan amendment was submitted to the Secretary of Health and Human Services.

(b) STANDARDS FOR RECIPROCAL RECOGNITION AMONG PARTNERSHIP STATES.—In order to permit portability in long-term care insurance policies purchased under State long-term care insurance partnerships, the Secretary of Health and Human Services shall develop, not later than January 1, 2007, and in consultation with the National Association of Insurance Commissioners, issuers of long-term care insurance policies, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, standards for uniform reciprocal recognition of such policies among States with qualified State long-term care insurance partnerships under which—

(1) benefits paid under such policies will be treated the same by all such States; and

(2) States with such partnerships shall be subject to such standards unless the State notifies the Secretary in writing of the

State's election to be exempt from such standards.

(c) ANNUAL REPORTS TO CONGRESS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall annually report to Congress on the long-term care insurance partnerships established in accordance with section 1917(b)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(ii)) (as amended by subsection (a)(1)). Such reports shall include analyses of the extent to which such partnerships expand or limit access of individuals to long-term care and the impact of such partnerships on Federal and State expenditures under the Medicare and Medicaid programs. Nothing in this section shall be construed as requiring the Secretary to conduct an independent review of each long-term care insurance policy offered under or in connection with such a partnership.

(2) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services, $1,000,000 for the period of fiscal years 2006 through 2010 to carry out paragraph (1).

(d) NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.—

(1) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a National Clearinghouse for Long-Term Care Information. The Clearinghouse may be established through a contract or interagency agreement.

(2) DUTIES.—

(A) IN GENERAL.—The National Clearinghouse for Long-Term Care Information shall—

(i) educate consumers with respect to the availability and limitations of coverage for long-term care under the Medicaid program and provide contact information for obtaining State-specific information on long-term care coverage, including eligibility and estate recovery requirements under State Medicaid programs;

(ii) provide objective information to assist consumers with the decisionmaking process for determining whether to purchase long-term care insurance or to pursue other private market alternatives for purchasing long-term care and provide contact information for additional objective resources on planning for long-term care needs; and

(iii) maintain a list of States with State long-term care insurance partnerships under the Medicaid program that provide reciprocal recognition of long-term care insurance policies issued under such partnerships.

(B) REQUIREMENT.—In providing information to consumers on long-term care in accordance with this subsection, the National Clearinghouse for Long-Term Care Information shall not advocate in favor of a specific long-term care insurance provider or a specific long-term care insurance policy.

(3) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, $3,000,000 for each of fiscal years 2006 through 2010.

## CHAPTER 3—ELIMINATING FRAUD, WASTE, AND ABUSE IN MEDICAID

### SEC. 6032. ENCOURAGING THE ENACTMENT OF STATE FALSE CLAIMS ACTS.

(a) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by inserting after section 1908A the following:

''STATE FALSE CLAIMS ACT REQUIREMENTS FOR INCREASED STATE SHARE OF RECOVERIES

''SEC. 1909. (a) IN GENERAL.—Notwithstanding section 1905(b), if a State has in effect a law relating to false or fraudulent claims that meets the requirements of subsection (b), the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under such law, shall be decreased by 10 percentage points.

''(b) REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are that the Inspector General of the Department of Health and Human Services, in consultation with the Attorney General, determines that the State has in effect a law that meets the following requirements:

''(1) The law establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to any expenditure described in section 1903(a).

''(2) The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in sections 3730 through 3732 of title 31, United States Code.

''(3) The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General.

''(4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31, United States Code.

''(c) DEEMED COMPLIANCE.—A State that, as of January 1, 2007, has a law in effect that meets the requirements of subsection (b) shall be deemed to be in compliance with such requirements for so long as the law continues to meet such requirements.

''(d) NO PRECLUSION OF BROADER LAWS.—Nothing in this section shall be construed as prohibiting a State that has in effect a law that establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to programs in addition to the State program under this title, or with respect to expenditures in addition to expenditures described in section 1903(a), from being considered to be in compliance with the requirements of subsection (a) so long as the law meets such requirements.''.

(b) EFFECTIVE DATE.—Except as provided in section 6035(e), the amendments made by this section take effect on January 1, 2007.

### SEC. 6033. EMPLOYEE EDUCATION ABOUT FALSE CLAIMS RECOVERY.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (66), by striking ''and'' at the end;

(2) in paragraph (67) by striking the period at the end and inserting ''; and''; and

(3) by inserting after paragraph (67) the following:

''(68) provide that any entity that receives or makes annual payments under the State plan of at least $5,000,000, as a condition of receiving such payments, shall—

''(A) establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));

''(B) include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

''(C) include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.''.

(b) EFFECTIVE DATE.—Except as provided in section 6035(e), the amendments made by subsection (a) take effect on January 1, 2007.

### SEC. 6034. PROHIBITION ON RESTOCKING AND DOUBLE BILLING OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Section 1903(i)(10) of the Social Security Act (42 U.S.C. 1396b(i)), as amended by section 6002(b), is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking ''; or'' at the end and inserting '', and''; and

(3) by adding at the end the following:

''(D) with respect to any amount expended for reimbursement to a pharmacy under this title for the ingredient cost of a covered outpatient drug for which the pharmacy has already received payment under this title (other than with respect to a reasonable restocking fee for such drug); or''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the first day of the first fiscal year quarter that begins after the date of enactment of this Act.

### SEC. 6035. MEDICAID INTEGRITY PROGRAM.

(a) ESTABLISHMENT OF MEDICAID INTEGRITY PROGRAM.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(1) by redesignating section 1936 as section 1937; and

(2) by inserting after section 1935 the following:

''MEDICAID INTEGRITY PROGRAM

''SEC. 1936. (a) IN GENERAL.—There is hereby established the Medicaid Integrity Program (in this section referred to as the 'Program') under which the Secretary shall promote the integrity of the program under this title by entering into contracts in accordance with this section with eligible entities to carry out the activities described in subsection (b).

''(b) ACTIVITIES DESCRIBED—Activities described in this subsection are as follows:

''(1) Review of the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under a State plan approved under this title (or under any waiver of such plan approved under section 1115) to determine whether fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have any potential for resulting in an expenditure of funds under this title in a manner which is not intended under the provisions of this title.

''(2) Audit of claims for payment for items or services furnished, or administrative services rendered, under a State plan under this title, including—

''(A) cost reports;

''(B) consulting contracts; and

''(C) risk contracts under section 1903(m).

''(3) Identification of overpayments to individuals or entities receiving Federal funds under this title.

''(4) Education of providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

''(c) ELIGIBLE ENTITY AND CONTRACTING REQUIREMENTS.—

''(1) IN GENERAL.—An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) if the entity satisfies the requirements of paragraphs (2) and (3).

''(2) ELIGIBILITY REQUIREMENTS.—The requirements of this paragraph are the following:

''(A) The entity has demonstrated capability to carry out the activities described in subsection (b).

''(B) In carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this title and in other cases arising out of such activities.

''(C) The entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

''(D) The entity meets such other requirements as the Secretary may impose.

''(3) CONTRACTING REQUIREMENTS.—The entity has contracted with the Secretary in accordance with such procedures as the Secretary shall by regulation establish, except that such procedures shall include the following:

''(A) Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

''(B) Competitive procedures to be used—

''(i) when entering into new contracts under this section;

''(ii) when entering into contracts that may result in the elimination of responsibilities under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and

''(iii) at any other time considered appropriate by the Secretary.

''(C) Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

The Secretary may enter into such contracts without regard to final rules having been promulgated.

''(4) LIMITATION ON CONTRACTOR LIABILITY.—The Secretary shall by regulation provide for the limitation of a contractor's liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1157.

''(d) COMPREHENSIVE PLAN FOR PROGRAM INTEGRITY.—

''(1) 5-YEAR PLAN.—With respect to the 5 fiscal year period beginning with fiscal year 2006, and each such 5-fiscal year period that begins thereafter, the Secretary shall establish a comprehensive plan for ensuring the integrity of the program established under this title by combatting fraud, waste, and abuse.

''(2) CONSULTATION.—Each 5-fiscal year plan established under paragraph (1) shall be developed by the Secretary in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, the Comptroller General of the United States, the Inspector General of the Department of Health and Human Services, and State officials with responsibility for controlling provider fraud and abuse under State plans under this title.

''(e) APPROPRIATION.—

''(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to carry out the Medicaid Integrity Program under this section, without further appropriation—

''(A) for fiscal year 2006, $5,000,000;

''(B) for each of fiscal years 2007 and 2008, $50,000,000; and

''(C) for each fiscal year thereafter, $75,000,000.

''(2) AVAILABILITY.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

''(3) INCREASE IN CMS STAFFING DEVOTED TO PROTECTING MEDICAID PROGRAM INTEGRITY.—From the amounts appropriated under paragraph (1), the Secretary shall increase by 100 the number of full-time equivalent employees whose duties consist solely of protecting the integrity of the Medicaid program established under this section by providing effective support and assistance to States to combat provider fraud and abuse.

''(4) ANNUAL REPORT.—Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2006), the Secretary shall submit a report to Congress which identifies—

''(A) the use of funds appropriated pursuant to paragraph (1); and

''(B) the effectiveness of the use of such funds.''.

(b) STATE REQUIREMENT TO COOPERATE WITH INTEGRITY PROGRAM EFFORTS.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)), as amended by section 6033(a), is amended—

(1) in paragraph (67), by striking ''and'' at the end;

(2) in paragraph (68), by striking the period at the end and inserting ''; and''; and

(3) by inserting after paragraph (68), the following:

''(69) provide that the State must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1936.''.

(c) INCREASED FUNDING FOR MEDICAID FRAUD AND ABUSE CONTROL ACTIVITIES.—

(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Office of the Inspector General of the Department of Health and Human Services, without further appropriation, $25,000,000 for each of fiscal years 2006 through 2010, for activities of such Office with respect to the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2) AVAILABILITY; AMOUNTS IN ADDITION TO OTHER AMOUNTS APPROPRIATED FOR SUCH ACTIVITIES.—Amounts appropriated pursuant to paragraph (1) shall—

(A) remain available until expended; and

(B) be in addition to any other amounts appropriated or made available to the Office of the Inspector General of the Department of Health and Human Services for activities of such Office with respect to the Medicaid program.

(3) ANNUAL REPORT.—Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2006), the Inspector General of the Department of Health and Human Services shall submit a report to Congress which identifies—

(A) the use of funds appropriated pursuant to paragraph (1); and

(B) the effectiveness of the use of such funds.

(d) NATIONAL EXPANSION OF THE MEDICARE-MEDICAID (MEDI-MEDI) DATA MATCH PILOT PROGRAM.—

(1) REQUIREMENT OF THE MEDICARE INTEGRITY PROGRAM.—Section 1893 of the Social Security Act (42 U.S.C. 1395ddd) is amended—

(A) in subsection (b), by adding at the end the following:

''(6) The Medicare-Medicaid Data Match Program in accordance with subsection (g).''; and

(B) by adding at the end the following:

''(g) MEDICARE-MEDICAID DATA MATCH PROGRAM.—

''(1) EXPANSION OF PROGRAM.—

''(A) IN GENERAL.—The Secretary shall enter into contracts with eligible entities for the purpose of ensuring that, beginning with 2006, the Medicare-Medicaid Data Match Program (commonly referred to as the 'Medi-Medi Program') is conducted with respect to the program established under this title and State Medicaid programs under title XIX for the purpose of—

''(i) identifying program vulnerabilities in the program established under this title and the Medicaid program established under title XIX through the use of computer algorithms to look for payment anomalies (including billing or billing patterns identified with respect to service, time, or patient that appear to be suspect or otherwise implausible);

''(ii) working with States, the Attorney General, and the Inspector General of the Department of Health and Human Services to coordinate appropriate actions to protect the Federal and State share of expenditures under the Medicaid program under title XIX, as well as the program established under this title; and

''(iii) increasing the effectiveness and efficiency of both such programs through cost avoidance, savings, and recoupments of fraudulent, wasteful, or abusive expenditures.

''(B) REPORTING REQUIREMENTS.—The Secretary shall make available in a timely manner any data and statistical information collected by the Medi-Medi Program to the Attorney General, the Director of the Federal Bureau of Investigation, the Inspector General of the Department of Health and Human Services, and the States (including a medicaid fraud and abuse control unit described in section 1903(q)). Such information shall be disseminated no less frequently than quarterly.

''(2) LIMITED WAIVER AUTHORITY.—The Secretary shall waive only such requirements of this section and of titles XI and XIX as are necessary to carry out paragraph (1).''.

(2) FUNDING.—Section 1817(k)(4) of such Act (42 U.S.C. 1395i(k)(4)), as amended by section 5204 of this Act, is amended—

(A) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraphs (B), (C), and (D)''; and

(B) by adding at the end the following:

''(D) EXPANSION OF THE MEDICARE-MEDICAID DATA MATCH PROGRAM.—The amount appropriated under subparagraph (A) for a fiscal year is further increased as follows for purposes of carrying out section 1893(b)(6) for the respective fiscal year:

''(i) $12,000,000 for fiscal year 2006.

''(ii) $24,000,000 for fiscal year 2007.

''(iii) $36,000,000 for fiscal year 2008.

''(iv) $48,000,000 for fiscal year 2009.

''(v) $60,000,000 for fiscal year 2010 and each fiscal year thereafter.''.

(e) DELAYED EFFECTIVE DATE FOR CHAPTER.—Except as otherwise provided in this chapter, in the case of a State plan under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this chapter, the State plan shall not be regarded as failing to comply with the requirements of such Act solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

**SEC. 6036. ENHANCING THIRD PARTY IDENTIFICATION AND PAYMENT.**

(a) CLARIFICATION OF THIRD PARTIES LEGALLY RESPONSIBLE FOR PAYMENT OF A CLAIM

FOR A HEALTH CARE ITEM OR SERVICE.—Section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i)—

(A) by inserting '', self-insured plans'' after ''health insurers''; and

(B) by striking ''and health maintenance organizations'' and inserting ''managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service''; and

(2) in subparagraph (G)—

(A) by inserting ''a self-insured plan,'' after ''1974,''; and

(B) by striking ''and a health maintenance organization'' and inserting ''a managed care organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service''.

(b) REQUIREMENT FOR THIRD PARTIES TO PROVIDE THE STATE WITH COVERAGE ELIGIBILITY AND CLAIMS DATA.—Section 1902(a)(25) of such Act (42 U.S.C. 1396a(a)(25)) is amended—

(1) in subparagraph (G), by striking ''and'' at the end;

(2) in subparagraph (H), by adding ''and'' after the semicolon at the end; and

(3) by inserting after subparagraph (H), the following:

''(I) that the State shall provide assurances satisfactory to the Secretary that the State has in effect laws requiring health insurers, including self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, as a condition of doing business in the State, to—

''(i) provide, with respect to individuals who are eligible for, or are provided, medical assistance under the State plan, upon the request of the State, information to determine during what period the individual or their spouses or their dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address, and identifying number of the plan) in a manner prescribed by the Secretary;

''(ii) accept the State's right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State plan;

''(iii) respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service; and

''(iv) agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if—

''(I) the claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and

''(II) any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State's submission of such claim;''.

(c) EFFECTIVE DATE.—Except as provided in section 6035(e), the amendments made by this section take effect on January 1, 2006.

**SEC. 6037. IMPROVED ENFORCEMENT OF DOCUMENTATION REQUIREMENTS.**

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (i), as amended by section 104 of Public Law 109–91 and section 6031(a) of this Act—

(A) by striking ''or'' at the end of paragraph (20);

(B) by striking the period at the end of paragraph (21) and inserting ''; or''; and

(C) by inserting after paragraph (21) the following new paragraph:

''(22) with respect to amounts expended for medical assistance for an individual who declares under section 1137(d)(1)(A) to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this title, unless the requirement of subsection (x) is met.''; and

(2) by adding at the end the following new subsection:

''(x)(1) For purposes of subsection (i)(23), the requirement of this subsection is, with respect to an individual declaring to be a citizen or national of the United States, that, subject to paragraph (2), there is presented satisfactory documentary evidence of citizenship or nationality (as defined in paragraph (3)) of the individual.

''(2) The requirement of paragraph (1) shall not apply to an alien who is eligible for medical assistance under this title—

''(A) and is entitled to or enrolled for benefits under any part of title XVIII;

''(B) on the basis of receiving supplemental security income benefits under title XVI; or

''(C) on such other basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality had been previously presented.

''(3)(A) For purposes of this subsection, the term 'satisfactory documentary evidence of citizenship or nationality' means—

''(i) any document described in subparagraph (B); or

''(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

''(B) The following are documents described in this subparagraph:

''(i) A United States passport.

''(ii) Form N–550 or N–570 (Certificate of Naturalization).

''(iii) Form N–560 or N–561 (Certificate of United States Citizenship).

''(iv) A valid State-issued driver's license or other identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act, but only if the State issuing the license or such document requires proof of United States citizenship before issuance of such license or document or obtains a social security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen.

''(v) Such other document as the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity.

''(C) The following are documents described in this subparagraph:

''(i) A certificate of birth in the United States.

''(ii) Form FS–545 or Form DS–1350 (Certification of Birth Abroad).

''(iii) Form I–97 (United States Citizen Identification Card).

''(iv) Form FS–240 (Report of Birth Abroad of a Citizen of the United States).

''(v) Such other document (not described in subparagraph (B)(iv)) as the Secretary may specify that provides proof of United States citizenship or nationality.

''(D) The following are documents described in this subparagraph:

''(i) Any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act.

''(ii) Any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.

''(E) A reference in this paragraph to a form includes a reference to any successor form.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to determinations of initial eligibility for medical assistance made on or after July 1, 2006, and to redeterminations of eligibility made on or after such date in the case of individuals for whom the requirement of section 1903(z) of the Social Security Act, as added by such amendments, was not previously met.

(c) IMPLEMENTATION REQUIREMENT.—As soon as practicable after the date of enactment of this Act, the Secretary of Health and Human Services shall establish an outreach program that is designed to educate individuals who are likely to be affected by the requirements of subsections (i)(23) and (x) of section 1903 of the Social Security Act (as added by subsection (a)) about such requirements and how they may be satisfied.

## CHAPTER 4—FLEXIBILITY IN COST SHARING AND BENEFITS

**SEC. 6041. STATE OPTION FOR ALTERNATIVE MEDICAID PREMIUMS AND COST SHARING.**

(a) IN GENERAL.—Title XIX of the Social Security Act is amended by inserting after section 1916 the following new section:

''STATE OPTION FOR ALTERNATIVE PREMIUMS AND COST SHARING

''SEC. 1916A. (a) STATE FLEXIBILITY.—

''(1) IN GENERAL.—Notwithstanding sections 1916 and 1902(a)(10)(B), a State, at its option and through a State plan amendment, may impose premiums and cost sharing for any group of individuals (as specified by the State) and for any type of services (other than drugs for which cost sharing may be imposed under subsection (c)), and may vary such premiums and cost sharing among such groups or types, consistent with the limitations established under this section. Nothing in this section shall be construed as superseding (or preventing the application of) section 1916(g).

''(2) DEFINITIONS.—In this section:

''(A) PREMIUM.—The term 'premium' includes any enrollment fee or similar charge.

''(B) COST SHARING.—The term 'cost sharing' includes any deduction, copayment, or similar charge.

''(b) LIMITATIONS ON EXERCISE OF AUTHORITY.—

''(1) INDIVIDUALS WITH FAMILY INCOME BETWEEN 100 AND 150 PERCENT OF THE POVERTY LINE.—In the case of an individual whose family income exceeds 100 percent, but does not exceed 150 percent, of the poverty line applicable to a family of the size involved, subject to subsections (c)(2) and (e)(2)(A)—

''(A) no premium may be imposed under the plan; and

''(B) with respect to cost sharing—

''(i) the cost sharing imposed under subsection (a) with respect to any item or service may not exceed 10 percent of the cost of such item or service; and

''(ii) the total aggregate amount of cost sharing imposed under this section (including any cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved, as applied on a quarterly or monthly basis (as specified by the State).

''(2) INDIVIDUALS WITH FAMILY INCOME ABOVE 150 PERCENT OF THE POVERTY LINE.— In the case of an individual whose family income exceeds 150 percent of the poverty line

applicable to a family of the size involved, subject to subsections (c)(2) and (e)(2)(A)—

''(A) the total aggregate amount of premiums and cost sharing imposed under this section (including any cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved, as applied on a quarterly or monthly basis (as specified by the State); and

''(B) with respect to cost sharing, the cost sharing imposed with respect to any item or service under subsection (a) may not exceed 20 percent of the cost of such item or service.

''(3) ADDITIONAL LIMITATIONS.—

''(A) PREMIUMS.—No premiums shall be imposed under this section with respect to the following:

''(i) Individuals under 18 years of age that are required to be provided medical assistance under section 1902(a)(10)(A)(i), and including individuals with respect to whom aid or assistance is made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such title, without regard to age.

''(ii) Pregnant women.

''(iii) Any terminally ill individual who is receiving hospice care (as defined in section 1905(o)).

''(iv) Any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

''(v) Women who are receiving medical assistance by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa).

''(B) COST SHARING.—Subject to the succeeding provisions of this section, no cost sharing shall be imposed under subsection (a) with respect to the following:

''(i) Services furnished to individuals under 18 years of age that are required to be provided medical assistance under section 1902(a)(10)(A)(i), and including services furnished to individuals with respect to whom aid or assistance is made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such title, without regard to age.

''(ii) Preventive services (such as well baby and well child care and immunizations) provided to children under 18 years of age regardless of family income.

''(iii) Services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy.

''(iv) Services furnished to a terminally ill individual who is receiving hospice care (as defined in section 1905(o)).

''(v) Services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

''(vi) Emergency services (as defined by the Secretary for purposes of section 1916(a)(2)(D)).

''(vii) Family planning services and supplies described in section 1905(a)(4)(C).

''(viii) Services furnished to women who are receiving medical assistance by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa).

''(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing a State from exempting additional classes of individuals from premiums under this section or from exempting additional individuals or services from cost sharing under subsection (a).

''(4) DETERMINATIONS OF FAMILY INCOME.—In applying this subsection, family income shall be determined in a manner specified by the State for purposes of this subsection, including the use of such disregards as the State may provide. Family income shall be determined for such period and at such periodicity as the State may provide under this title.

''(5) POVERTY LINE DEFINED.—For purposes of this section, the term 'poverty line' has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

''(6) CONSTRUCTION.—Nothing in this section shall be construed—

''(A) as preventing a State from further limiting the premiums and cost sharing imposed under this section beyond the limitations provided under this section;

''(B) as affecting the authority of the Secretary through waiver to modify limitations on premiums and cost sharing under this section; or

''(C) as affecting any such waiver of requirements in effect under this title before the date of the enactment of this section with regard to the imposition of premiums and cost sharing.

''(d) ENFORCEABILITY OF PREMIUMS AND OTHER COST SHARING.—

''(1) PREMIUMS.—Notwithstanding section 1916(c)(3) and section 1902(a)(10)(B), a State may, at its option, condition the provision of medical assistance for an individual upon prepayment of a premium authorized to be imposed under this section, or may terminate eligibility for such medical assistance on the basis of failure to pay such a premium but shall not terminate eligibility of an individual for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. A State may apply the previous sentence for some or all groups of beneficiaries as specified by the State and may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

''(2) COST SHARING.—Notwithstanding section 1916(e) or any other provision of law, a State may permit a provider participating under the State plan to require, as a condition for the provision of care, items, or services to an individual entitled to medical assistance under this title for such care, items, or services, the payment of any cost sharing authorized to be imposed under this section with respect to such care, items, or services. Nothing in this paragraph shall be construed as preventing a provider from reducing or waiving the application of such cost sharing on a case-by-case basis.''.

(b) INDEXING NOMINAL COST SHARING AND CONFORMING AMENDMENT.—Section 1916 of such Act (42 U.S.C. 1396o) is amended—

(1) in subsection (f), by inserting ''and section 1916A'' after ''(b)(3)''; and

(2) by adding at the end the following new subsection:

''(h) In applying this section and subsections (c) and (e) of section 1916A, with respect to cost sharing that is 'nominal' in amount, the Secretary shall increase such 'nominal' amounts for each year (beginning with 2006) by the annual percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) as rounded up in an appropriate manner.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to cost sharing imposed for items and services furnished on or after March 31, 2006.

**SEC. 6042. SPECIAL RULES FOR COST SHARING FOR PRESCRIPTION DRUGS.**

(a) IN GENERAL.—Section 1916A of the Social Security Act, as inserted by section 6041(a), is amended by inserting after subsection (b) the following new subsection:

''(c) SPECIAL RULES FOR COST SHARING FOR PRESCRIPTION DRUGS.—

''(1) IN GENERAL.—In order to encourage beneficiaries to use drugs (in this subsection referred to as 'preferred drugs') identified by the State as the least (or less) costly effective prescription drugs within a class of drugs (as defined by the State), with respect to one or more groups of beneficiaries specified by the State, subject to paragraph (2), the State may—

''(A) provide cost sharing (instead of the level of cost sharing otherwise permitted under section 1916, but subject to paragraphs (2) and (3)) with respect to drugs that are not preferred drugs within a class; and

''(B) waive or reduce the cost sharing otherwise applicable for preferred drugs within such class and shall not apply any such cost sharing for such preferred drugs for individuals for whom cost sharing may not otherwise be imposed under subsection (b)(3)(B).

''(2) LIMITATIONS.—

''(A) BY INCOME GROUP.—In no case may the cost sharing under paragraph (1)(A) with respect to a non-preferred drug exceed—

''(i) in the case of an individual whose family income does not exceed 150 percent of the poverty line applicable to a family of the size involved, the amount of nominal cost sharing (as otherwise determined under section 1916); or

''(ii) in the case of an individual whose family income exceeds 150 percent of the poverty line applicable to a family of the size involved, 20 percent of the cost of the drug.

''(B) LIMITATION TO NOMINAL FOR EXEMPT POPULATIONS.—In the case of an individual who is otherwise not subject to cost sharing due to the application of subsection (b)(3)(B), any cost sharing under paragraph (1)(A) with respect to a non-preferred drug may not exceed a nominal amount (as otherwise determined under section 1916).

''(C) CONTINUED APPLICATION OF AGGREGATE CAP.—In addition to the limitations imposed under subparagraphs (A) and (B), any cost sharing under paragraph (1)(A) continues to be subject to the aggregate cap on cost sharing applied under paragraph (1) or (2) of subsection (b), as the case may be.

''(3) WAIVER.—In carrying out paragraph (1), a State shall provide for the application of cost sharing levels applicable to a preferred drug in the case of a drug that is not a preferred drug if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual or both.

''(4) EXCLUSION AUTHORITY.—Nothing in this subsection shall be construed as preventing a State from excluding specified drugs or classes of drugs from the application of paragraph (1).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost sharing imposed for items and services furnished on or after March 31, 2006.

**SEC. 6043. EMERGENCY ROOM COPAYMENTS FOR NON-EMERGENCY CARE.**

(a) IN GENERAL.—Section 1916A of the Social Security Act, as inserted by section 6041

and as amended by section 6042, is further amended by adding at the end the following new subsection:

''(e) STATE OPTION FOR PERMITTING HOSPITALS TO IMPOSE COST SHARING FOR NON-EMERGENCY CARE FURNISHED IN AN EMERGENCY DEPARTMENT.—

''(1) IN GENERAL.—Notwithstanding section 1916 and section 1902(a)(1) or the previous provisions of this section, but subject to the limitations of paragraph (2), a State may, by amendment to its State plan under this title, permit a hospital to impose cost sharing for non-emergency services furnished to an individual (within one or more groups of individuals specified by the State) in the hospital emergency department under this subsection if the following conditions are met:

''(A) ACCESS TO NON-EMERGENCY ROOM PROVIDER.—The individual has actually available and accessible (as such terms are applied by the Secretary under section 1916(b)(3)) an alternate non-emergency services provider with respect to such services.

''(B) NOTICE.—The hospital must inform the beneficiary after receiving an appropriate medical screening examination under section 1867 and after a determination has been made that the individual does not have an emergency medical condition, but before providing the non-emergency services, of the following:

''(i) The hospital may require the payment of the State specified cost sharing before the service can be provided.

''(ii) The name and location of an alternate non-emergency services provider (described in subparagraph (A)) that is actually available and accessible (as described in such subparagraph).

''(iii) The fact that such alternate provider can provide the services without the imposition of cost sharing described in clause (i).

''(iv) The hospital provides a referral to coordinate scheduling of this treatment.

Nothing in this subsection shall be construed as preventing a State from applying (or waiving) cost sharing otherwise permissible under this section to services described in clause (iii).

''(2) LIMITATIONS.—

''(A) FOR POOREST BENEFICIARIES.—In the case of an individual described in subsection (b)(1), the cost sharing imposed under this subsection may not exceed twice the amount determined to be nominal under section 1916, subject to the percent of income limitation otherwise applicable under subsection (b)(1).

''(B) APPLICATION TO EXEMPT POPULATIONS.—In the case of an individual who is otherwise not subject to cost sharing under subsection (b)(3), a State may impose cost sharing under paragraph (1) for care in an amount that does not exceed a nominal amount (as otherwise determined under section 1916) so long as no cost sharing is imposed to receive such care through an outpatient department or other alternative health care provider in the geographic area of the hospital emergency department involved.

''(C) CONTINUED APPLICATION OF AGGREGATE CAP; RELATION TO OTHER COST SHARING.—In addition to the limitations imposed under subparagraphs (A) and (B), any cost sharing under paragraph (1) is subject to the aggregate cap on cost sharing applied under paragraph (1) or (2) of subsection (b), as the case may be. Cost sharing imposed for services under this subsection shall be instead of any cost sharing that may be imposed for such services under subsection (a).

''(3) CONSTRUCTION.—Nothing in this section shall be construed—

''(A) to limit a hospital's obligations with respect to screening and stabilizing treatment of an emergency medical condition under section 1867; or

''(B) to modify any obligations under either State or Federal standards relating to the application of a prudent-layperson standard with respect to payment or coverage of emergency services by any managed care organization.

''(5) DEFINITIONS.—For purposes of this subsection:

''(A) NON-EMERGENCY SERVICES.—The term 'non-emergency services' means any care or services furnished in a emergency department of a hospital that the physician determines do not constitute an appropriate medical screening examination or stabilizing examination and treatment required to be provided by the hospital under section 1867.

''(B) ALTERNATE NON-EMERGENCY SERVICES PROVIDER.—The term 'alternative non-emergency services provider' means, with respect to non-emergency services for the diagnosis or treatment of a condition, a health care provider, such as a physician's office, health care clinic, community health center, hospital outpatient department, or similar health care provider, that can provide clinically appropriate services for the diagnosis or treatment of a condition contemporaneously with the provision of the non-emergency services that would be provided in a emergency department of a hospital for the diagnosis or treatment of a condition, and that is participating in the program under this title.''.

(b) GRANT FUNDS FOR ESTABLISHMENT OF ALTERNATE NON-EMERGENCY SERVICES PROVIDERS.—Section 1903 of the Social Security Act (42 U.S.C. 1396b), as amended by section 6037(a)(2), is amended by adding at the end the following new subsection:

''(y) PAYMENTS FOR ESTABLISHMENT OF ALTERNATE NON-EMERGENCY SERVICES PROVIDERS.—

''(1) PAYMENTS.—In addition to the payments otherwise provided under subsection (a), subject to paragraph (2), the Secretary shall provide for payments to States under such subsection for the establishment of alternate non-emergency service providers (as defined in section 1916A(e)(5)(B)), or networks of such providers.

''(2) LIMITATION.—The total amount of payments under this subsection shall not exceed $50,000,000 during the 4-year period beginning with 2006. This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

''(3) PREFERENCE.—In providing for payments to States under this subsection, the Secretary shall provide preference to States that establish, or provide for, alternate non-emergency services providers or networks of such providers that—

''(A) serve rural or underserved areas where beneficiaries under this title may not have regular access to providers of primary care services; or

''(B) are in partnership with local community hospitals.

''(4) FORM AND MANNER OF PAYMENT.—Payment to a State under this subsection shall be made only upon the filing of such application in such form and in such manner as the Secretary shall specify. Payment to a State under this subsection shall be made in the same manner as other payments under section 1903(a).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to non-emergency services furnished on or after January 1, 2007.

**SEC. 6044. USE OF BENCHMARK BENEFIT PACKAGES.**

(a) IN GENERAL.—Title XIX of the Social Security Act, as amended by section 6035, is amended by redesignating section 1937 as section 1938 and by inserting after section 1936 the following new section:

''STATE FLEXIBILITY IN BENEFIT PACKAGES

''SEC. 1937. (a) STATE OPTION OF PROVIDING BENCHMARK BENEFITS.—

''(1) AUTHORITY.—

''(A) IN GENERAL.—Notwithstanding any other provision of this title, a State, at its option as a State plan amendment, may provide for medical assistance under this title to individuals within one or more groups of individuals specified by the State through enrollment in coverage that provides—

''(i) benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2); and

''(ii) for any child under 19 years of age who is covered under the State plan under section 1902(a)(10)(A), wrap-around benefits to the benchmark coverage or benchmark equivalent coverage consisting of early and periodic screening, diagnostic, and treatment services defined in section 1905(r).

''(B) LIMITATION.—The State may only exercise the option under subparagraph (A) for an individual eligible under an eligibility category that had been established under the State plan on or before the date of the enactment of this section.

''(C) OPTION OF WRAP-AROUND BENEFITS.—In the case of coverage described in subparagraph (A), a State, at its option, may provide such wrap-around or additional benefits as the State may specify.

''(D) TREATMENT AS MEDICAL ASSISTANCE.—Payment of premiums for such coverage under this subsection shall be treated as payment of other insurance premiums described in the third sentence of section 1905(a).

''(2) APPLICATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a State may require that a full-benefit eligible individual (as defined in subparagraph (C)) within a group obtain benefits under this title through enrollment in coverage described in paragraph (1)(A). A State may apply the previous sentence to individuals within 1 or more groups of such individuals.

''(B) LIMITATION ON APPLICATION.—A State may not require under subparagraph (A) an individual to obtain benefits through enrollment described in paragraph (1)(A) if the individual is within one of the following categories of individuals:

''(i) MANDATORY PREGNANT WOMEN.—The individual is a pregnant woman who is required to be covered under the State plan under section 1902(a)(10)(A)(i).

''(ii) BLIND OR DISABLED INDIVIDUALS.—The individual qualifies for medical assistance under the State plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for supplemental security income benefits under title XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance on the basis of section 1902(e)(3).

''(iii) DUAL ELIGIBLES.—The individual is entitled to benefits under any part of title XVIII.

''(iv) TERMINALLY ILL HOSPICE PATIENTS.—The individual is terminally ill and is receiving benefits for hospice care under this title.

''(v) ELIGIBLE ON BASIS OF INSTITUTIONALIZATION.—The individual is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

''(vi) MEDICALLY FRAIL AND SPECIAL MEDICAL NEEDS INDIVIDUALS.—The individual is

medically frail or otherwise an individual with special medical needs (as identified in accordance with regulations of the Secretary).

''(vii) BENEFICIARIES QUALIFYING FOR LONG-TERM CARE SERVICES.—The individual qualifies based on medical condition for medical assistance for long-term care services described in section 1917(c)(1)(C).

''(viii) CHILDREN IN FOSTER CARE RECEIVING CHILD WELFARE SERVICES AND CHILDREN RECEIVING FOSTER CARE OR ADOPTION ASSISTANCE.—The individual is an individual with respect to whom aid or assistance is made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such such title, without regard to age.

''(ix) TANF AND SECTION 1931 PARENTS.—The individual qualifies for medical assistance on the basis of eligibility to receive assistance under a State plan funded under part A of title IV (as in effect on or after the welfare reform effective date defined in section 1931(i)).

''(x) WOMEN IN THE BREAST OR CERVICAL CANCER PROGRAM.—The individual is a woman who is receiving medical assistance by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa).

''(xii) LIMITED SERVICES BENEFICIARIES.—The individual—

''(I) qualifies for medical assistance on the basis of section 1902(a)(10)(A)(ii)(XII); or

''(II) is not a qualified alien (as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and receives care and services necessary for the treatment of an emergency medical condition in accordance with section 1903(v).

''(C) FULL-BENEFIT ELIGIBLE INDIVIDUALS.—

''(i) IN GENERAL.—For purposes of this paragraph, subject to clause (ii), the term 'full-benefit eligible individual' means for a State for a month an individual who is determined eligible by the State for medical assistance for all services defined in section 1905(a) which are covered under the State plan under this title for such month under section 1902(a)(10)(A) or under any other category of eligibility for medical assistance for all such services under this title, as determined by the Secretary.

''(ii) EXCLUSION OF MEDICALLY NEEDY AND SPEND-DOWN POPULATIONS.—Such term shall not include an individual determined to be eligible by the State for medical assistance under section 1902(a)(10)(C) or by reason of section 1902(f) or otherwise eligible based on a reduction of income based on costs incurred for medical or other remedial care.

''(b) BENCHMARK BENEFIT PACKAGES.—

''(1) IN GENERAL.—For purposes of subsection (a)(1), each of the following coverage shall be considered to be benchmark coverage:

''(A) FEHBP-EQUIVALENT HEALTH INSURANCE COVERAGE.—The standard Blue Cross/Blue Shield preferred provider option service benefit plan, described in and offered under section 8903(1) of title 5, United States Code.

''(B) STATE EMPLOYEE COVERAGE.—A health benefits coverage plan that is offered and generally available to State employees in the State involved.

''(C) COVERAGE OFFERED THROUGH HMO.—The health insurance coverage plan that—

''(i) is offered by a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act), and

''(ii) has the largest insured commercial, non-medicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State involved.

''(D) SECRETARY-APPROVED COVERAGE.—Any other health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population proposed to be provided such coverage.

''(2) BENCHMARK-EQUIVALENT COVERAGE.—For purposes of subsection (a)(1), coverage that meets the following requirement shall be considered to be benchmark-equivalent coverage:

''(A) INCLUSION OF BASIC SERVICES.—The coverage includes benefits for items and services within each of the following categories of basic services:

''(i) Inpatient and outpatient hospital services.

''(ii) Physicians' surgical and medical services.

''(iii) Laboratory and x-ray services.

''(iv) Well-baby and well-child care, including age-appropriate immunizations.

''(v) Other appropriate preventive services, as designated by the Secretary.

''(B) AGGREGATE ACTUARIAL VALUE EQUIVALENT TO BENCHMARK PACKAGE.—The coverage has an aggregate actuarial value that is at least actuarially equivalent to one of the benchmark benefit packages described in paragraph (1).

''(C) SUBSTANTIAL ACTUARIAL VALUE FOR ADDITIONAL SERVICES INCLUDED IN BENCHMARK PACKAGE.—With respect to each of the following categories of additional services for which coverage is provided under the benchmark benefit package used under subparagraph (B), the coverage has an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of services in such package:

''(i) Coverage of prescription drugs.

''(ii) Mental health services.

''(iii) Vision services.

''(iv) Hearing services.

''(3) DETERMINATION OF ACTUARIAL VALUE.—The actuarial value of coverage of benchmark benefit packages shall be set forth in an actuarial opinion in an actuarial report that has been prepared—

''(A) by an individual who is a member of the American Academy of Actuaries;

''(B) using generally accepted actuarial principles and methodologies;

''(C) using a standardized set of utilization and price factors;

''(D) using a standardized population that is representative of the population involved;

''(E) applying the same principles and factors in comparing the value of different coverage (or categories of services);

''(F) without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and

''(G) taking into account the ability of a State to reduce benefits by taking into account the increase in actuarial value of benefits coverage offered under this title that results from the limitations on cost sharing under such coverage.

The actuary preparing the opinion shall select and specify in the memorandum the standardized set and population to be used under subparagraphs (C) and (D).

''(4) COVERAGE OF RURAL HEALTH CLINIC AND FQHC SERVICES.—Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark equivalent coverage under this section unless—

''(A) the individual has access, through such coverage or otherwise, to services described in subparagraphs (B) and (C) of section 1905(a)(2); and

''(B) payment for such services is made in accordance with the requirements of section 1902(bb).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on March 31, 2006.

## CHAPTER 5—STATE FINANCING UNDER MEDICAID

### SEC. 6051. MANAGED CARE ORGANIZATION PROVIDER TAX REFORM.

(a) IN GENERAL.—Section 1903(w)(7)(A)(viii) of the Social Security Act (42 U.S.C. 1396b(w)(7)(A)(viii)) is amended to read as follows:

''(viii) Services of managed care organizations (including health maintenance organizations, preferred provider organizations, and such other similar organizations as the Secretary may specify by regulation).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendment made by subsection (a) shall be effective as of the date of the enactment of this Act.

(2) DELAY IN EFFECTIVE DATE.—

(A) IN GENERAL.—Subject to subparagraph (B), in the case of a State specified in subparagraph (B), the amendment made by subsection (a) shall be effective as of October 1, 2009.

(B) SPECIFIED STATES.—For purposes of subparagraph (A), the States specified in this subparagraph are States that have enacted a law providing for a tax on the services of a medicaid managed care organization with a contract under section 1903(m) of the Social Security Act as of December 8, 2005.

(c) CLARIFICATION REGARDING NON-REGULATION OF TRANSFERS.—

(1) IN GENERAL.—Nothing in section 1903(w) of the Social Security Act (42 U.S.C. 1396b(w)) shall be construed by the Secretary of Health and Human Services as prohibiting a State's use of funds as the non-Federal share of expenditures under title XIX of such Act where such funds are transferred from or certified by a publicly-owned regional medical center located in another State and described in paragraph (2), so long as the Secretary determines that such use of funds is proper and in the interest of the program under title XIX.

(2) CENTER DESCRIBED.—A center described in this paragraph is a publicly-owned regional medical center that—

(A) provides level 1 trauma and burn care services;

(B) provides level 3 neonatal care services;

(C) is obligated to serve all patients, regardless of State of origin;

(D) is located within a Standard Metropolitan Statistical Area (SMSA) that includes at least 3 States, including the States described in paragraph (1);

(E) serves as a tertiary care provider for patients residing within a 125 mile radius; and

(F) meets the criteria for a disproportionate share hospital under section 1923 of such Act in at least one State other than the one in which the center is located.

(3) EFFECTIVE PERIOD.—This subsection shall apply through December 31, 2006.

### SEC. 6052. REFORMS OF CASE MANAGEMENT AND TARGETED CASE MANAGEMENT.

(a) IN GENERAL.—Section 1915(g) of the Social Security Act (42 U.S.C. 1396n(g)(2)) is amended by striking paragraph (2) and inserting the following:

''(2) For purposes of this subsection:

''(A)(i) The term 'case management services' means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

''(ii) Such term includes the following:

''(I) Assessment of an eligible individual to determine service needs, including activities that focus on needs identification, to determine the need for any medical, educational,

social, or other services. Such assessment activities include the following:

''(aa) Taking client history.

''(bb) Identifying the needs of the individual, and completing related documentation.

''(cc) Gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible individual.

''(II) Development of a specific care plan based on the information collected through an assessment, that specifies the goals and actions to address the medical, social, educational, and other services needed by the eligible individual, including activities such as ensuring the active participation of the eligible individual and working with the individual (or the individual's authorized health care decision maker) and others to develop such goals and identify a course of action to respond to the assessed needs of the eligible individual.

''(III) Referral and related activities to help an individual obtain needed services, including activities that help link eligible individuals with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the individual.

''(IV) Monitoring and followup activities, including activities and contacts that are necessary to ensure the care plan is effectively implemented and adequately addressing the needs of the eligible individual, and which may be with the individual, family members, providers, or other entities and conducted as frequently as necessary to help determine such matters as—

''(aa) whether services are being furnished in accordance with an individual's care plan;

''(bb) whether the services in the care plan are adequate; and

''(cc) whether there are changes in the needs or status of the eligible individual, and if so, making necessary adjustments in the care plan and service arrangements with providers.

''(iii) Such term does not include the direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred, including, with respect to the direct delivery of foster care services, services such as (but not limited to) the following:

''(I) Research gathering and completion of documentation required by the foster care program.

''(II) Assessing adoption placements.

''(III) Recruiting or interviewing potential foster care parents.

''(IV) Serving legal papers.

''(V) Home investigations.

''(VI) Providing transportation.

''(VII) Administering foster care subsidies.

''(VIII) Making placement arrangements.

''(B) The term 'targeted case management services' are case management services that are furnished without regard to the requirements of section 1902(a)(1) and section 1902(a)(10)(B) to specific classes of individuals or to individuals who reside in specified areas.

''(3) With respect to contacts with individuals who are not eligible for medical assistance under the State plan or, in the case of targeted case management services, individuals who are eligible for such assistance but are not part of the target population specified in the State plan, such contacts—

''(A) are considered an allowable case management activity, when the purpose of the contact is directly related to the management of the eligible individual's care; and

''(B) are not considered an allowable case management activity if such contacts relate directly to the identification and management of the noneligible or nontargeted individual's needs and care.

''(4)(A) In accordance with section 1902(a)(25), Federal financial participation only is available under this title for case management services or targeted case management services if there are no other third parties liable to pay for such services, including as reimbursement under a medical, social, educational, or other program.

''(B) A State shall allocate the costs of any part of such services which are reimbursable under another federally funded program in accordance with OMB Circular A–87 (or any related or successor guidance or regulations regarding allocation of costs among federally funded programs) under an approved cost allocation program.

''(5) Nothing in this subsection shall be construed as affecting the application of rules with respect to third party liability under programs, or activities carried out under title XXVI of the Public Health Service Act or by the Indian Health Service.''.

(b) REGULATIONS.—The Secretary shall promulgate regulations to carry out the amendment made by subsection (a) which may be effective and final immediately on an interim basis as of the date of publication of the interim final regulation. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comments on such regulation after the date of publication. The Secretary may change or revise such regulation after completion of the period of public comment.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2006.

**SEC. 6053. ADDITIONAL FMAP ADJUSTMENTS.**

(a) HOLD HARMLESS FOR CERTAIN DECREASE.—Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), if, for purposes of titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.), the Federal medical assistance percentage determined for the State specified in section 4725(a) of Public Law 105-33 for fiscal year 2006 or fiscal year 2007 is less than the Federal medical assistance percentage determined for such State for fiscal year 2005, the Federal medical assistance percentage determined for such State for fiscal year 2005 shall be substituted for the Federal medical assistance percentage otherwise determined for such State for fiscal year 2006 or fiscal year 2007, as the case may be.

(b) HOLD HARMLESS FOR KATRINA IMPACT.—Notwithstanding any other provision of law, for purposes of titles XIX and XXI of the Social Security Act, the Secretary of Health and Human Services, in computing the Federal medical assistance percentage under section 1905(b) of such Act (42 U.S.C. 1396d(b)) for any year after 2006 for a State that the Secretary determines has a significant number of evacuees who were evacuated to, and live in, the State as a result of Hurricane Katrina as of October 1, 2005, shall disregard such evacuees (and income attributable to such evacuees) from such computation.

**SEC. 6054. DSH ALLOTMENT FOR THE DISTRICT OF COLUMBIA.**

(a) IN GENERAL.—For purposes of determining the DSH allotment for the District of Columbia under section 1923 of the Social Security Act (42 U.S.C. 1396r–4) for fiscal year 2006 and each subsequent fiscal year, the table in subsection (f)(2) of such section is amended under each of the columns for FY 00, FY 01, and FY 02, in the entry for the District of Columbia by striking ''32'' and inserting ''49''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if enacted on October 1, 2005, and shall only apply to disproportionate share hospital adjustment expenditures applicable to fiscal year 2006 and subsequent fiscal years made on or after that date.

**SEC. 6055. INCREASE IN MEDICAID PAYMENTS TO INSULAR AREAS.**

Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended—

(1) in paragraph (2), by inserting ''and subject to paragraph (3)'' after ''subsection (f)''; and

(2) by adding at the end the following new paragraph:

''(3) FISCAL YEARS 2006 AND 2007 FOR CERTAIN INSULAR AREAS.—The amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for fiscal year 2006 and fiscal year 2007 shall be increased by the following amounts:

''(A) For Puerto Rico, $12,000,000 for fiscal year 2006 and $12,000,000 for fiscal year 2007.

''(B) For the Virgin Islands, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

''(C) For Guam, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

''(D) For the Northern Mariana Islands, $1,000,000 for fiscal year 2006 and $2,000,000 for fiscal year 2007.

''(E) For American Samoa, $2,000,000 for fiscal year 2006 and $4,000,000 for fiscal year 2007.

Such amounts shall not be taken into account in applying paragraph (2) for fiscal year 2007 but shall be taken into account in applying such paragraph for fiscal year 2008 and subsequent fiscal years.''.

## CHAPTER 6—OTHER PROVISIONS

### Subchapter A—Family Opportunity Act

**SEC. 6061. SHORT TITLE OF SUBCHAPTER.**

This subchapter may be cited as the ''Family Opportunity Act of 2005'' or the ''Dylan Lee James Act''.

**SEC. 6062. OPPORTUNITY FOR FAMILIES OF DISABLED CHILDREN TO PURCHASE MEDICAID COVERAGE FOR SUCH CHILDREN.**

(a) STATE OPTION TO ALLOW FAMILIES OF DISABLED CHILDREN TO PURCHASE MEDICAID COVERAGE FOR SUCH CHILDREN.—

(1) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(10)(A)(ii)—

(i) by striking ''or'' at the end of subclause (XVII);

(ii) by adding ''or'' at the end of subclause (XVIII); and

(iii) by adding at the end the following new subclause:

''(XIX) who are disabled children described in subsection (cc)(1);''; and

(B) by adding at the end the following new subsection:

''(cc)(1) Individuals described in this paragraph are individuals—

''(A) who are children who have not attained 19 years of age and are born—

''(i) on or after January 1, 2001 (or, at the option of a State, on or after an earlier date), in the case of the second, third, and fourth quarters of fiscal year 2007;

''(ii) on or after October 1, 1995 (or, at the option of a State, on or after an earlier date), in the case of each quarter of fiscal year 2008; and

''(iii) after October 1, 1989, in the case of each quarter of fiscal year 2009 and each quarter of any fiscal year thereafter;

''(B) who would be considered disabled under section 1614(a)(3)(C) (as determined under title XVI for children but without regard to any income or asset eligibility requirements that apply under such title with respect to children); and

''(C) whose family income does not exceed such income level as the State establishes and does not exceed—

''(i) 300 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved; or

''(ii) such higher percent of such poverty line as a State may establish, except that—

''(I) any medical assistance provided to an individual whose family income exceeds 300 percent of such poverty line may only be provided with State funds; and

''(II) no Federal financial participation shall be provided under section 1903(a) for any medical assistance provided to such an individual.''.

(2) INTERACTION WITH EMPLOYER-SPONSORED FAMILY COVERAGE.—Section 1902(cc) of such Act (42 U.S.C. 1396a(cc)), as added by paragraph (1)(B), is amended by adding at the end the following new paragraph:

''(2)(A) If an employer of a parent of an individual described in paragraph (1) offers family coverage under a group health plan (as defined in section 2791(a) of the Public Health Service Act), the State shall—

''(i) notwithstanding section 1906, require such parent to apply for, enroll in, and pay premiums for such coverage as a condition of such parent's child being or remaining eligible for medical assistance under subsection (a)(10)(A)(ii)(XIX) if the parent is determined eligible for such coverage and the employer contributes at least 50 percent of the total cost of annual premiums for such coverage; and

''(ii) if such coverage is obtained—

''(I) subject to paragraph (2) of section 1916(h), reduce the premium imposed by the State under that section in an amount that reasonably reflects the premium contribution made by the parent for private coverage on behalf of a child with a disability; and

''(II) treat such coverage as a third party liability under subsection (a)(25).

''(B) In the case of a parent to which subparagraph (A) applies, a State, notwithstanding section 1906 but subject to paragraph (1)(C)(ii), may provide for payment of any portion of the annual premium for such family coverage that the parent is required to pay. Any payments made by the State under this subparagraph shall be considered, for purposes of section 1903(a), to be payments for medical assistance.''.

(b) STATE OPTION TO IMPOSE INCOME-RELATED PREMIUMS.—Section 1916 of such Act (42 U.S.C. 1396o) is amended—

(1) in subsection (a), by striking ''subsection (g)'' and inserting ''subsections (g) and (i)''; and

(2) by adding at the end, as amended by section 6041(b)(2), the following new subsection:

''(i)(1) With respect to disabled children provided medical assistance under section 1902(a)(10)(A)(ii)(XIX), subject to paragraph (2), a State may (in a uniform manner for such children) require the families of such children to pay monthly premiums set on a sliding scale based on family income.

''(2) A premium requirement imposed under paragraph (1) may only apply to the extent that—

''(A) in the case of a disabled child described in that paragraph whose family income—

''(i) does not exceed 200 percent of the poverty line, the aggregate amount of such premium and any premium that the parent is required to pay for family coverage under section 1902(cc)(2)(A)(i) and other cost-sharing charges do not exceed 5 percent of the family's income; and

''(ii) exceeds 200, but does not exceed 300, percent of the poverty line, the aggregate amount of such premium and any premium that the parent is required to pay for family coverage under section 1902(cc)(2)(A)(i) and other cost-sharing charges do not exceed 7.5 percent of the family's income; and

''(B) the requirement is imposed consistent with section 1902(cc)(2)(A)(ii)(I).

''(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of a child under section 1902(a)(10)(A)(ii)(XIX) for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of at least 60 days from the date on which the premium became past due. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.''.

(c) CONFORMING AMENDMENTS.—(1) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended in the matter preceding subparagraph (A), by inserting ''1902(a)(10)(A)(ii)(XIX),'' after ''1902(a)(10)(A)(ii)(XVIII),''.

(2) Section 1905(u)(2)(B) of such Act (42 U.S.C. 1396d(u)(2)(B)) is amended by adding at the end the following sentence: ''Such term excludes any child eligible for medical assistance only by reason of section 1902(a)(10)(A)(ii)(XIX).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance for items and services furnished on or after January 1, 2007.

**SEC. 6063. DEMONSTRATION PROJECTS REGARDING HOME AND COMMUNITY-BASED ALTERNATIVES TO PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN.**

(a) IN GENERAL.—The Secretary is authorized to conduct, during each of fiscal years 2007 through 2011, demonstration projects (each in the section referred to as a ''demonstration project'') in accordance with this section under which up to 10 States (as defined for purposes of title XIX of the Social Security Act) are awarded grants, on a competitive basis, to test the effectiveness in improving or maintaining a child's functional level and cost-effectiveness of providing coverage of home and community-based alternatives to psychiatric residential treatment for children enrolled in the Medicaid program under title XIX of such Act.

(b) APPLICATION OF TERMS AND CONDITIONS.—

(1) IN GENERAL.—Subject to the provisions of this section, for the purposes of the demonstration projects, and only with respect to children enrolled under such demonstration projects, a psychiatric residential treatment facility (as defined in section 483.352 of title 42 of the Code of Federal Regulations) shall be deemed to be a facility specified in section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), and to be included in each reference in such section 1915(c) to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded.

(2) STATE OPTION TO ASSURE CONTINUITY OF MEDICAID COVERAGE.—Upon the termination of a demonstration project under this section, the State that conducted the project may elect, only with respect to a child who is enrolled in such project on the termination date, to continue to provide medical assistance for coverage of home and community-based alternatives to psychiatric residential treatment for the child in accordance with section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), as modified through the application of paragraph (1). Expenditures incurred for providing such medical assistance shall be treated as a home and community-based waiver program under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) for purposes of payment under section 1903 of such Act (42 U.S.C. 1396b).

(c) TERMS OF DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—Except as otherwise provided in this section, a demonstration project shall be subject to the same terms and conditions as apply to a waiver under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), including the waiver of certain requirements under the first sentence of paragraph (3) of such section but not applying the second sentence of such paragraph.

(2) BUDGET NEUTRALITY.—In conducting the demonstration projects under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) do not exceed the amount which the Secretary estimates would have been paid under that title if the demonstration projects under this section had not been implemented.

(3) EVALUATION.—The application for a demonstration project shall include an assurance to provide for such interim and final evaluations of the demonstration project by independent third parties, and for such interim and final reports to the Secretary, as the Secretary may require.

(d) PAYMENTS TO STATES; LIMITATIONS TO SCOPE AND FUNDING.—

(1) IN GENERAL.—Subject to paragraph (2), a demonstration project approved by the Secretary under this section shall be treated as a home and community-based waiver program under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) for purposes of payment under section 1903 of such Act (42 U.S.C. 1396b).

(2) LIMITATION.—In no case may the amount of payments made by the Secretary under this section for State demonstration projects for a fiscal year exceed the amount available under subsection (f)(2)(A) for such fiscal year.

(e) SECRETARY'S EVALUATION AND REPORT.—The Secretary shall conduct an interim and final evaluation of State demonstration projects under this section and shall report to the President and Congress the conclusions of such evaluations within 12 months of completing such evaluations.

(f) FUNDING.—

(1) IN GENERAL.—For the purpose of carrying out this section, there are appropriated, from amounts in the Treasury not otherwise appropriated, for fiscal years 2007 through 2011, a total of $218,000,000, of which—

(A) the amount specified in paragraph (2) shall be available for each of fiscal years 2007 through 2011; and

(B) a total of $1,000,000 shall be available to the Secretary for the evaluations and report under subsection (e).

(2) FISCAL YEAR LIMIT.—

(A) IN GENERAL.—For purposes of paragraph (1), the amount specified in this paragraph for a fiscal year is the amount specified in subparagraph (B) for the fiscal year plus the difference, if any, between the total amount available under this paragraph for prior fiscal years and the total amount previously expended under paragraph (1)(A) for such prior fiscal years.

(B) FISCAL YEAR AMOUNTS.—The amount specified in this subparagraph for—

(i) fiscal year 2007 is $21,000,000;

(ii) fiscal year 2008 is $37,000,000;

(iii) fiscal year 2009 is $49,000,000;

(iv) fiscal year 2010 is $53,000,000; and

(v) fiscal year 2011 is $57,000,000.

**SEC. 6064. DEVELOPMENT AND SUPPORT OF FAMILY-TO-FAMILY HEALTH INFORMATION CENTERS.**

Section 501 of the Social Security Act (42 U.S.C. 701) is amended by adding at the end the following new subsection:

''(c)(1)(A) For the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional and national significance for the development and support of family-to-family health information centers described in paragraph (2), there is appropriated to the Secretary, out of any money in the Treasury not otherwise appropriated—

''(i) $3,000,000 for fiscal year 2007;

''(ii) $4,000,000 for fiscal year 2008; and

''(iii) $5,000,000 for fiscal year 2009.

''(B) Funds appropriated or authorized to be appropriated under subparagraph (A) shall—

''(i) be in addition to amounts appropriated under subsection (a) and retained under section 502(a)(1) for the purpose of carrying out activities described in subsection (a)(2); and

''(ii) remain available until expended.

''(2) The family-to-family health information centers described in this paragraph are centers that—

''(A) assist families of children with disabilities or special health care needs to make informed choices about health care in order to promote good treatment decisions, cost-effectiveness, and improved health outcomes for such children;

''(B) provide information regarding the health care needs of, and resources available for, such children;

''(C) identify successful health delivery models for such children;

''(D) develop with representatives of health care providers, managed care organizations, health care purchasers, and appropriate State agencies, a model for collaboration between families of such children and health professionals;

''(E) provide training and guidance regarding caring for such children;

''(F) conduct outreach activities to the families of such children, health professionals, schools, and other appropriate entities and individuals; and

''(G) are staffed—

''(i) by such families who have expertise in Federal and State public and private health care systems; and

''(ii) by health professionals.

''(3) The Secretary shall develop family-to-family health information centers described in paragraph (2) in accordance with the following:

''(A) With respect to fiscal year 2007, such centers shall be developed in not less than 25 States.

''(B) With respect to fiscal year 2008, such centers shall be developed in not less than 40 States.

''(C) With respect to fiscal year 2009 and each fiscal year thereafter, such centers shall be developed in all States.

''(4) The provisions of this title that are applicable to the funds made available to the Secretary under section 502(a)(1) apply in the same manner to funds made available to the Secretary under paragraph (1)(A).

''(5) For purposes of this subsection, the term 'State' means each of the 50 States and the District of Columbia.''.

**SEC. 6065. RESTORATION OF MEDICAID ELIGIBILITY FOR CERTAIN SSI BENEFICIARIES.**

(a) IN GENERAL.—Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)) is amended—

(1) by inserting ''(aa)'' after ''(II)'';

(2) by striking '') and'' and inserting ''and'';

(3) by striking ''section or who are'' and inserting ''section), (bb) who are''; and

(4) by inserting before the comma at the end the following: '', or (cc) who are under 21 years of age and with respect to whom supplemental security income benefits would be paid under title XVI if subparagraphs (A) and (B) of section 1611(c)(7) were applied without regard to the phrase 'the first day of the month following' ''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to medical assistance for items and services furnished on or after the date that is 1 year after the date of enactment of this Act.

**Subchapter B—Money Follows the Person Rebalancing Demonstration**

**SEC. 6071. MONEY FOLLOWS THE PERSON REBALANCING DEMONSTRATION.**

(a) PROGRAM PURPOSE AND AUTHORITY.—The Secretary is authorized to award, on a competitive basis, grants to States in accordance with this section for demonstration projects (each in this section referred to as an ''MFP demonstration project'') designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under State Medicaid programs:

(1) REBALANCING.—Increase the use of home and community-based, rather than institutional, long-term care services.

(2) MONEY FOLLOWS THE PERSON.—Eliminate barriers or mechanisms, whether in the State law, the State Medicaid plan, the State budget, or otherwise, that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice.

(3) CONTINUITY OF SERVICE.—Increase the ability of the State Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institutional to a community setting.

(4) QUALITY ASSURANCE AND QUALITY IMPROVEMENT.—Ensure that procedures are in place (at least comparable to those required under the qualified HCB program) to provide quality assurance for eligible individuals receiving Medicaid home and community-based long-term care services and to provide for continuous quality improvement in such services.

(b) DEFINITIONS.—For purposes of this section:

(1) HOME AND COMMUNITY-BASED LONG-TERM CARE SERVICES.—The term ''home and community-based long-term care services'' means, with respect to a State Medicaid program, home and community-based services (including home health and personal care services) that are provided under the State's qualified HCB program or that could be provided under such a program but are otherwise provided under the Medicaid program.

(2) ELIGIBLE INDIVIDUAL.—The term ''eligible individual'' means, with respect to an MFP demonstration project of a State, an individual in the State—

(A) who, immediately before beginning participation in the MFP demonstration project—

(i) resides (and has resided, for a period of not less than 6 months or for such longer minimum period, not to exceed 2 years, as may be specified by the State) in an inpatient facility;

(ii) is receiving Medicaid benefits for inpatient services furnished by such inpatient facility; and

(iii) with respect to whom a determination has been made that, but for the provision of home and community-based long-term care services, the individual would continue to require the level of care provided in an inpatient facility and, in any case in which the State applies a more stringent level of care standard as a result of implementing the State plan option permitted under section 1915(i) of the Social Security Act, the individual must continue to require at least the level of care which had resulted in admission to the institution; and

(B) who resides in a qualified residence beginning on the initial date of participation in the demonstration project.

(3) INPATIENT FACILITY.—The term ''inpatient facility'' means a hospital, nursing facility, or intermediate care facility for the mentally retarded. Such term includes an institution for mental diseases, but only, with respect to a State, to the extent medical assistance is available under the State Medicaid plan for services provided by such institution.

(4) MEDICAID.—The term ''Medicaid'' means, with respect to a State, the State program under title XIX of the Social Security Act (including any waiver or demonstration under such title or under section 1115 of such Act relating to such title).

(5) QUALIFIED HCB PROGRAM.—The term ''qualified HCB program'' means a program providing home and community-based long-term care services operating under Medicaid, whether or not operating under waiver authority.

(6) QUALIFIED RESIDENCE.—The term ''qualified residence'' means, with respect to an eligible individual—

(A) a home owned or leased by the individual or the individual's family member;

(B) an apartment with an individual lease, with lockable access and egress, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control; and

(C) a residence, in a community-based residential setting, in which no more than 4 unrelated individuals reside.

(7) QUALIFIED EXPENDITURES.—The term ''qualified expenditures'' means expenditures by the State under its MFP demonstration project for home and community-based long-term care services for an eligible individual participating in the MFP demonstration project, but only with respect to services furnished during the 12-month period beginning on the date the individual is discharged from an inpatient facility referred to in paragraph (2)(A)(i).

(8) SELF-DIRECTED SERVICES.—The term ''self-directed'' means, with respect to home and community-based long-term care services for an eligible individual, such services for the individual which are planned and purchased under the direction and control of such individual or the individual's authorized representative (as defined by the Secretary), including the amount, duration, scope, provider, and location of such services, under the State Medicaid program consistent with the following requirements:

(A) ASSESSMENT.—There is an assessment of the needs, capabilities, and preferences of the individual with respect to such services.

(B) SERVICE PLAN.—Based on such assessment, there is developed jointly with such individual or the individual's authorized representative a plan for such services for such individual that is approved by the State and that—

(i) specifies those services, if any, which the individual or the individual's authorized representative would be responsible for directing;

(ii) identifies the methods by which the individual or the individual's authorized representative or an agency designated by an individual or representative will select, manage, and dismiss providers of such services;

(iii) specifies the role of family members and others whose participation is sought by the individual or the individual's authorized representative with respect to such services;

(iv) is developed through a person-centered process that—

(I) is directed by the individual or the individual's authorized representative;

(II) builds upon the individual's capacity to engage in activities that promote community life and that respects the individual's preferences, choices, and abilities; and

(III) involves families, friends, and professionals as desired or required by the individual or the individual's authorized representative;

(v) includes appropriate risk management techniques that recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan based upon the resources and capabilities of the individual or the individual's authorized representative; and

(vi) may include an individualized budget which identifies the dollar value of the services and supports under the control and direction of the individual or the individual's authorized representative.

(C) BUDGET PROCESS.—With respect to individualized budgets described in subparagraph (B)(vi), the State application under subsection (c)—

(i) describes the method for calculating the dollar values in such budgets based on reliable costs and service utilization;

(ii) defines a process for making adjustments in such dollar values to reflect changes in individual assessments and service plans; and

(iii) provides a procedure to evaluate expenditures under such budgets.

(9) STATE.—The term ''State'' has the meaning given such term for purposes of title XIX of the Social Security Act.

(c) STATE APPLICATION.—A State seeking approval of an MFP demonstration project shall submit to the Secretary, at such time and in such format as the Secretary requires, an application meeting the following requirements and containing such additional information, provisions, and assurances, as the Secretary may require:

(1) ASSURANCE OF A PUBLIC DEVELOPMENT PROCESS.—The application contains an assurance that the State has engaged, and will continue to engage, in a public process for the design, development, and evaluation of the MFP demonstration project that allows for input from eligible individuals, the families of such individuals, authorized representatives of such individuals, providers, and other interested parties.

(2) OPERATION IN CONNECTION WITH QUALIFIED HCB PROGRAM TO ASSURE CONTINUITY OF SERVICES.—The State will conduct the MFP demonstration project for eligible individuals in conjunction with the operation of a qualified HCB program that is in operation (or approved) in the State for such individuals in a manner that assures continuity of Medicaid coverage for such individuals so long as such individuals continue to be eligible for medical assistance.

(3) DEMONSTRATION PROJECT PERIOD.—The application shall specify the period of the MFP demonstration project, which shall include at least 2 consecutive fiscal years in the 5-fiscal-year period beginning with fiscal year 2007.

(4) SERVICE AREA.—The application shall specify the service area or areas of the MFP demonstration project, which may be a statewide area or 1 or more geographic areas of the State.

(5) TARGETED GROUPS AND NUMBERS OF INDIVIDUALS SERVED.—The application shall specify—

(A) the target groups of eligible individuals to be assisted to transition from an inpatient facility to a qualified residence during each fiscal year of the MFP demonstration project;

(B) the projected numbers of eligible individuals in each targeted group of eligible individuals to be so assisted during each such year; and

(C) the estimated total annual qualified expenditures for each fiscal year of the MFP demonstration project.

(6) INDIVIDUAL CHOICE, CONTINUITY OF CARE.—The application shall contain assurances that—

(A) each eligible individual or the individual's authorized representative will be provided the opportunity to make an informed choice regarding whether to participate in the MFP demonstration project;

(B) each eligible individual or the individual's authorized representative will choose the qualified residence in which the individual will reside and the setting in which the individual will receive home and community-based long-term care services;

(C) the State will continue to make available, so long as the State operates its qualified HCB program consistent with applicable requirements, home and community-based long-term care services to each individual who completes participation in the MFP demonstration project for as long as the individual remains eligible for medical assistance for such services under such qualified HCB program (including meeting a requirement relating to requiring a level of care provided in an inpatient facility and continuing to require such services, and, if the State applies a more stringent level of care standard as a result of implementing the State plan option permitted under section 1915(i) of the Social Security Act, meeting the requirement for at least the level of care which had resulted in the individual's admission to the institution).

(7) REBALANCING.—The application shall—

(A) provide such information as the Secretary may require concerning the dollar amounts of State Medicaid expenditures for the fiscal year, immediately preceding the first fiscal year of the State's MFP demonstration project, for long-term care services and the percentage of such expenditures that were for institutional long-term care services or were for home and community-based long-term care services;

(B)(i) specify the methods to be used by the State to increase, for each fiscal year during the MFP demonstration project, the dollar amount of such total expenditures for home and community-based long-term care services and the percentage of such total expenditures for long-term care services that are for home and community-based long-term care services; and

(ii) describe the extent to which the MFP demonstration project will contribute to accomplishment of objectives described in subsection (a).

(8) MONEY FOLLOWS THE PERSON.—The application shall describe the methods to be used by the State to eliminate any legal, budgetary, or other barriers to flexibility in the availability of Medicaid funds to pay for long-term care services for eligible individuals participating in the project in the appropriate settings of their choice, including costs to transition from an institutional setting to a qualified residence.

(9) MAINTENANCE OF EFFORT AND COST-EFFECTIVENESS.—The application shall contain or be accompanied by such information and assurances as may be required to satisfy the Secretary that—

(A) total expenditures under the State Medicaid program for home and community-based long-term care services will not be less for any fiscal year during the MFP demonstration project than for the greater of such expenditures for—

(i) fiscal year 2005; or

(ii) any succeeding fiscal year before the first year of the MFP demonstration project; and

(B) in the case of a qualified HCB program operating under a waiver under subsection (c) or (d) of section 1915 of the Social Security Act (42 U.S.C. 1396n), but for the amount awarded under a grant under this section, the State program would continue to meet the cost-effectiveness requirements of subsection (c)(2)(D) of such section or comparable requirements under subsection (d)(5) of such section, respectively.

(10) WAIVER REQUESTS.—The application shall contain or be accompanied by requests for any modification or adjustment of waivers of Medicaid requirements described in subsection (d)(3), including adjustments to the maximum numbers of individuals included and package of benefits, including one-time transitional services, provided.

(11) QUALITY ASSURANCE AND QUALITY IMPROVEMENT.—The application shall include—

(A) a plan satisfactory to the Secretary for quality assurance and quality improvement for home and community-based long-term care services under the State Medicaid program, including a plan to assure the health and welfare of individuals participating in the MFP demonstration project; and

(B) an assurance that the State will cooperate in carrying out activities under subsection (f) to develop and implement continuous quality assurance and quality improvement systems for home and community-based long-term care services.

(12) OPTIONAL PROGRAM FOR SELF-DIRECTED SERVICES.—If the State elects to provide for any home and community-based long-term care services as self-directed services (as defined in subsection (b)(8)) under the MFP demonstration project, the application shall provide the following:

(A) MEETING REQUIREMENTS.—A description of how the project will meet the applicable requirements of such subsection for the provision of self-directed services.

(B) VOLUNTARY ELECTION.—A description of how eligible individuals will be provided with the opportunity to make an informed election to receive self-directed services under the project and after the end of the project.

(C) STATE SUPPORT IN SERVICE PLAN DEVELOPMENT.—Satisfactory assurances that the State will provide support to eligible individuals who self-direct in developing and implementing their service plans.

(D) OVERSIGHT OF RECEIPT OF SERVICES.—Satisfactory assurances that the State will provide oversight of eligible individual's receipt of such self-directed services, including steps to assure the quality of services provided and that the provision of such services are consistent with the service plan under such subsection.

Nothing in this section shall be construed as requiring a State to make an election under the project to provide for home and community-based long-term care services as self-directed services, or as requiring an individual to elect to receive self-directed services under the project.

(13) REPORTS AND EVALUATION.—The application shall provide that—

(A) the State will furnish to the Secretary such reports concerning the MFP demonstration project, on such timetable, in such uniform format, and containing such information as the Secretary may require, as will allow for reliable comparisons of MFP demonstration projects across States; and

(B) the State will participate in and cooperate with the evaluation of the MFP demonstration project.

(d) SECRETARY'S AWARD OF COMPETITIVE GRANTS.—

(1) IN GENERAL.—The Secretary shall award grants under this section on a competitive basis to States selected from among those with applications meeting the requirements of subsection (c), in accordance with the provisions of this subsection.

(2) SELECTION AND MODIFICATION OF STATE APPLICATIONS.—In selecting State applications for the awarding of such a grant, the Secretary—

(A) shall take into consideration the manner in which, and extent to which, the State proposes to achieve the objectives specified in subsection (a);

(B) shall seek to achieve an appropriate national balance in the numbers of eligible individuals, within different target groups of eligible individuals, who are assisted to transition to qualified residences under MFP demonstration projects, and in the geographic distribution of States operating MFP demonstration projects;

(C) shall give preference to State applications proposing—

(i) to provide transition assistance to eligible individuals within multiple target groups; and

(ii) to provide eligible individuals with the opportunity to receive home and community-based long-term care services as self-directed services, as defined in subsection (b)(8); and

(D) shall take such objectives into consideration in setting the annual amounts of State grant awards under this section.

(3) WAIVER AUTHORITY.—The Secretary is authorized to waive the following provisions of title XIX of the Social Security Act, to the extent necessary to enable a State initiative to meet the requirements and accomplish the purposes of this section:

(A) STATEWIDENESS.—Section 1902(a)(1), in order to permit implementation of a State initiative in a selected area or areas of the State.

(B) COMPARABILITY.—Section 1902(a)(10)(B), in order to permit a State initiative to assist a selected category or categories of individuals described in subsection (b)(2)(A).

(C) INCOME AND RESOURCES ELIGIBILITY.—Section 1902(a)(10)(C)(i)(III), in order to permit a State to apply institutional eligibility rules to individuals transitioning to community-based care.

(D) PROVIDER AGREEMENTS.—Section 1902(a)(27), in order to permit a State to implement self-directed services in a cost-effective manner.

(4) CONDITIONAL APPROVAL OF OUTYEAR GRANT.—In awarding grants under this section, the Secretary shall condition the grant for the second and any subsequent fiscal years of the grant period on the following:

(A) NUMERICAL BENCHMARKS.—The State must demonstrate to the satisfaction of the Secretary that it is meeting numerical benchmarks specified in the grant agreement for—

(i) increasing State Medicaid support for home and community-based long-term care services under subsection (c)(5); and

(ii) numbers of eligible individuals assisted to transition to qualified residences.

(B) QUALITY OF CARE.—The State must demonstrate to the satisfaction of the Secretary that it is meeting the requirements under subsection (c)(11) to assure the health and welfare of MFP demonstration project participants.

(e) PAYMENTS TO STATES; CARRYOVER OF UNUSED GRANT AMOUNTS.—

(1) PAYMENTS.—For each calendar quarter in a fiscal year during the period a State is awarded a grant under subsection (d), the Secretary shall pay to the State from its grant award for such fiscal year an amount equal to the lesser of—

(A) the MFP-enhanced FMAP (as defined in paragraph (5)) of the amount of qualified expenditures made during such quarter; or

(B) the total amount remaining in such grant award for such fiscal year (taking into account the application of paragraph (2)).

(2) CARRYOVER OF UNUSED AMOUNTS.—Any portion of a State grant award for a fiscal year under this section remaining at the end of such fiscal year shall remain available to the State for the next 4 fiscal years, subject to paragraph (3).

(3) REAWARDING OF CERTAIN UNUSED AMOUNTS.—In the case of a State that the Secretary determines pursuant to subsection (d)(4) has failed to meet the conditions for continuation of a MFP demonstration project under this section in a succeeding year or years, the Secretary shall rescind the grant awards for such succeeding year or years, together with any unspent portion of an award for prior years, and shall add such amounts to the appropriation for the immediately succeeding fiscal year for grants under this section.

(4) PREVENTING DUPLICATION OF PAYMENT.—The payment under a MFP demonstration project with respect to qualified expenditures shall be in lieu of any payment with respect to such expenditures that could otherwise be paid under Medicaid, including under section 1903(a) of the Social Security Act. Nothing in the previous sentence shall be construed as preventing the payment under Medicaid for such expenditures in a grant year after amounts available to pay for such expenditures under the MFP demonstration project have been exhausted.

(5) MFP-ENHANCED FMAP.—For purposes of paragraph (1)(A), the ''MFP-enhanced FMAP'', for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the State increased by a number of percentage points equal to 50 percent of the number of percentage points by which (A) such Federal medical assistance percentage for the State, is less than (B) 100 percent; but in no case shall the MFP-enhanced FMAP for a State exceed 90 percent.

(f) QUALITY ASSURANCE AND IMPROVEMENT; TECHNICAL ASSISTANCE; OVERSIGHT.—

(1) IN GENERAL.—The Secretary, either directly or by grant or contract, shall provide for technical assistance to, and oversight of, States for purposes of upgrading quality assurance and quality improvement systems under Medicaid home and community-based waivers, including—

(A) dissemination of information on promising practices;

(B) guidance on system design elements addressing the unique needs of participating beneficiaries;

(C) ongoing consultation on quality, including assistance in developing necessary tools, resources, and monitoring systems; and

(D) guidance on remedying programmatic and systemic problems.

(2) FUNDING.—From the amounts appropriated under subsection (h)(1) for the portion of fiscal year 2007 that begins on January 1, 2007, and ends on September 30, 2007, and for fiscal year 2008, not more than $2,400,000 shall be available to the Secretary to carry out this subsection during the period that begins on January 1, 2007, and ends on September 30, 2011.

(g) RESEARCH AND EVALUATION.—

(1) IN GENERAL.—The Secretary, directly or through grant or contract, shall provide for research on, and a national evaluation of, the program under this section, including assistance to the Secretary in preparing the final report required under paragraph (2). The evaluation shall include an analysis of projected and actual savings related to the transition of individuals to qualified residences in each State conducting an MFP demonstration project.

(2) FINAL REPORT.—The Secretary shall make a final report to the President and Congress, not later than September 30, 2011, reflecting the evaluation described in paragraph (1) and providing findings and conclusions on the conduct and effectiveness of MFP demonstration projects.

(3) FUNDING.—From the amounts appropriated under subsection (h)(1) for each of fiscal years 2008 through 2011, not more than $1,100,000 per year shall be available to the Secretary to carry out this subsection.

(h) APPROPRIATIONS.—

(1) IN GENERAL.—There are appropriated, from any funds in the Treasury not otherwise appropriated, for grants to carry out this section—

(A) $250,000,000 for the portion of fiscal year 2007 beginning on January 1, 2007, and ending on September 30, 2007;

(B) $300,000,000 for fiscal year 2008;

(C) $350,000,000 for fiscal year 2009;

(D) $400,000,000 for fiscal year 2010; and

(E) $450,000,000 for fiscal year 2011.

(2) AVAILABILITY.—Amounts made available under paragraph (1) for a fiscal year shall remain available for the awarding of grants to States by not later than September 30, 2011.

**Subchapter C—Miscellaneous**

**SEC. 6081. MEDICAID TRANSFORMATION GRANTS.**

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b), as amended by sections 6037(a)(2) and 6043(b), is amended by adding at the end the following new subsection:

''(z) MEDICAID TRANSFORMATION PAYMENTS.—

''(1) IN GENERAL.—In addition to the payments provided under subsection (a), subject to paragraph (4), the Secretary shall provide for payments to States for the adoption of innovative methods to improve the effectiveness and efficiency in providing medical assistance under this title.

''(2) PERMISSIBLE USES OF FUNDS.—The following are examples of innovative methods for which funds provided under this subsection may be used:

''(A) Methods for reducing patient error rates through the implementation and use of electronic health records, electronic clinical decision support tools, or e-prescribing programs.

''(B) Methods for improving rates of collection from estates of amounts owed under this title.

''(C) Methods for reducing waste, fraud, and abuse under the program under this title, such as reducing improper payment rates as measured by annual payment error rate measurement (PERM) project rates.

''(D) Implementation of a medication risk management program as part of a drug use review program under section 1927(g).

''(E) Methods in reducing, in clinically appropriate ways, expenditures under this title for covered outpatient drugs, particularly in the categories of greatest drug utilization, by increasing the utilization of generic drugs through the use of education programs and other incentives to promote greater use of generic drugs.

''(F) Methods for improving access to primary and specialty physician care for the uninsured using integrated university-based hospital and clinic systems.

''(3) APPLICATION; TERMS AND CONDITIONS.—

''(A) IN GENERAL.—No payments shall be made to a State under this subsection unless the State applies to the Secretary for such payments in a form, manner, and time specified by the Secretary.

''(B) TERMS AND CONDITIONS.—Such payments are made under such terms and conditions consistent with this subsection as the Secretary prescribes.

''(C) ANNUAL REPORT.—Payment to a State under this subsection is conditioned on the State submitting to the Secretary an annual report on the programs supported by such payment. Such report shall include information on—

''(i) the specific uses of such payment;

''(ii) an assessment of quality improvements and clinical outcomes under such programs; and

''(iii) estimates of cost savings resulting from such programs.

''(4) FUNDING.—

''(A) LIMITATION ON FUNDS.—The total amount of payments under this subsection shall be equal to, and shall not exceed—

''(i) $75,000,000 for fiscal year 2007; and

''(ii) $75,000,000 for fiscal year 2008.

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

''(B) ALLOCATION OF FUNDS.—The Secretary shall specify a method for allocating the funds made available under this subsection among States. Such method shall provide preference for States that design programs that target health providers that treat significant numbers of Medicaid beneficiaries. Such method shall provide that not less than 25 percent of such funds shall be allocated among States the population of which (as determined according to data collected by the United States Census Bureau) as of July 1, 2004, was more than 105 percent of the population of the respective State (as so determined) as of April 1, 2000.

''(C) FORM AND MANNER OF PAYMENT.—Payment to a State under this subsection shall be made in the same manner as other payments under section 1903(a). There is no requirement for State matching funds to receive payments under this subsection.

''(5) MEDICATION RISK MANAGEMENT PROGRAM.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'medication risk management program' means a program for targeted beneficiaries that ensures that covered outpatient drugs are appropriately used to optimize therapeutic outcomes through improved medication use and to reduce the risk of adverse events.

''(B) ELEMENTS.—Such program may include the following elements:

''(i) The use of established principles and standards for drug utilization review and best practices to analyze prescription drug claims of targeted beneficiaries and identify outlier physicians.

''(ii) On an ongoing basis provide outlier physicians—

''(I) a comprehensive pharmacy claims history for each targeted beneficiary under their care;

''(II) information regarding the frequency and cost of relapses and hospitalizations of targeted beneficiaries under the physician's care; and

''(III) applicable best practice guidelines and empirical references.

''(iii) Monitor outlier physician's prescribing, such as failure to refill, dosage strengths, and provide incentives and information to encourage the adoption of best clinical practices.

''(C) TARGETED BENEFICIARIES.—For purposes of this paragraph, the term 'targeted beneficiaries' means Medicaid eligible beneficiaries who are identified as having high prescription drug costs and medical costs, such as individuals with behavioral disorders or multiple chronic diseases who are taking multiple medications.''.

**SEC. 6082. HEALTH OPPORTUNITY ACCOUNTS.**

Title XIX of the Social Security Act, as amended by sections 6035 and 6044, is amended—

(1) by redesignating section 1938 as section 1939; and

(2) by inserting after section 1937 the following new section:

''HEALTH OPPORTUNITY ACCOUNTS

''SEC. 1938. (a) AUTHORITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary shall establish a demonstration program under which States may provide under their State plans under this title (including such a plan operating under a statewide waiver under section 1115) in accordance with this section for the provision of alternative benefits consistent with subsection (c) for eligible population groups in one or more geographic areas of the State specified by the State. An amendment under the previous sentence is referred to in this section as a 'State demonstration program'.

''(2) INITIAL DEMONSTRATION.—

''(A) IN GENERAL.—The demonstration program under this section shall begin on January 1, 2007. During the first 5 years of such program, the Secretary shall not approve more than 10 States to conduct demonstration programs under this section, with each State demonstration program covering 1 or more geographic areas specified by the State. After such 5-year period—

''(i) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that a State demonstration program previously implemented has been unsuccessful, such a demonstration program may be extended or made permanent in the State; and

''(ii) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that all State demonstration programs previously implemented were unsuccessful, other States may implement State demonstration programs.

''(B) GAO REPORT.—

''(i) IN GENERAL.—Not later than 3 months after the end of the 5-year period described in subparagraph (A), the Comptroller General of the United States shall submit a report to Congress evaluating the demonstration programs conducted under this section during such period.

''(ii) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Comptroller General of the United States, $550,000 for the period of fiscal years 2007 through 2010 to carry out clause (i).

''(3) APPROVAL.—The Secretary shall not approve a State demonstration program under paragraph (1) unless the program includes the following:

''(A) Creating patient awareness of the high cost of medical care.

''(B) Providing incentives to patients to seek preventive care services.

''(C) Reducing inappropriate use of health care services.

''(D) Enabling patients to take responsibility for health outcomes.

''(E) Providing enrollment counselors and ongoing education activities.

''(F) Providing transactions involving health opportunity accounts to be conducted electronically and without cash.

''(G) Providing access to negotiated provider payment rates consistent with this section.

Nothing in this section shall be construed as preventing a State demonstration program from providing incentives for patients obtaining appropriate preventive care (as defined for purposes of section 223(c)(2)(C) of the Internal Revenue Code of 1986), such as additional account contributions for an individual demonstrating healthy prevention practices.

''(4) NO REQUIREMENT FOR STATEWIDENESS.—Nothing in this section or any other provision of law shall be construed to require that a State must provide for the implementation of a State demonstration program on a Statewide basis.

''(b) ELIGIBLE POPULATION GROUPS.—

''(1) IN GENERAL.—A State demonstration program under this section shall specify the eligible population groups consistent with paragraphs (2) and (3).

''(2) ELIGIBILITY LIMITATIONS DURING INITIAL DEMONSTRATION PERIOD.—During the initial 5 years of the demonstration program under this section, a State demonstration program shall not apply to any of the following individuals:

''(A) Individuals who are 65 years of age or older.

''(B) Individuals who are disabled, regardless of whether or not their eligibility for medical assistance under this title is based on such disability.

''(C) Individuals who are eligible for medical assistance under this title only because they are (or were within the previous 60 days) pregnant.

''(D) Individuals who have been eligible for medical assistance for a continuous period of less than 3 months.

''(3) ADDITIONAL LIMITATIONS.—A State demonstration program shall not apply to any individual within a category of individuals described in section 1937(a)(2)(B).

''(4) LIMITATIONS.—

''(A) STATE OPTION.—This subsection shall not be construed as preventing a State from further limiting eligibility.

''(B) ON ENROLLEES IN MEDICAID MANAGED CARE ORGANIZATIONS.—Insofar as the State provides for eligibility of individuals who are enrolled in medicaid managed care organizations, such individuals may participate in the State demonstration program only if the State provides assurances satisfactory to the Secretary that the following conditions are met with respect to any such organization:

''(i) In no case may the number of such individuals enrolled in the organization who participate in the program exceed 5 percent of the total number of individuals enrolled in such organization.

''(ii) The proportion of enrollees in the organization who so participate is not significantly disproportionate to the proportion of such enrollees in other such organizations who participate.

''(iii) The State has provided for an appropriate adjustment in the per capita payments to the organization to account for such participation, taking into account differences in the likely use of health services between enrollees who so participate and enrollees who do not so participate.

''(5) VOLUNTARY PARTICIPATION.—An eligible individual shall be enrolled in a State demonstration program only if the individual voluntarily enrolls. Except in such hardship cases as the Secretary shall specify, such an enrollment shall be effective for a period of 12 months, but may be extended for additional periods of 12 months each with the consent of the individual.

''(6) 1-YEAR MORATORIUM FOR REENROLLMENT.—An eligible individual who, for any reason, is disenrolled from a State demonstration program conducted under this section shall not be permitted to reenroll in such program before the end of the 1-year period that begins on the effective date of such disenrollment.

''(c) ALTERNATIVE BENEFITS.—

''(1) IN GENERAL.—The alternative benefits provided under this section shall consist, consistent with this subsection, of at least—

''(A) coverage for medical expenses in a year for items and services for which benefits are otherwise provided under this title after an annual deductible described in paragraph (2) has been met; and

''(B) contribution into a health opportunity account.

Nothing in subparagraph (A) shall be construed as preventing a State from providing for coverage of preventive care (referred to in subsection (a)(3)) within the alternative benefits without regard to the annual deductible.

''(2) ANNUAL DEDUCTIBLE.—The amount of the annual deductible described in paragraph (1)(A) shall be at least 100 percent, but no more than 110 percent, of the annualized amount of contributions to the health opportunity account under subsection (d)(2)(A)(i), determined without regard to any limitation described in subsection (d)(2)(C)(i)(II).

''(3) ACCESS TO NEGOTIATED PROVIDER PAYMENT RATES.—

''(A) FEE-FOR-SERVICE ENROLLEES.—In the case of an individual who is participating in a State demonstration program and who is not enrolled with a medicaid managed care organization, the State shall provide that the individual may obtain demonstration program medicaid services from—

''(i) any participating provider under this title at the same payment rates that would be applicable to such services if the deductible described in paragraph (1)(A) was not applicable; or

''(ii) any other provider at payment rates that do not exceed 125 percent of the payment rate that would be applicable to such services furnished by a participating provider under this title if the deductible described in paragraph (1)(A) was not applicable.

''(B) TREATMENT UNDER MEDICAID MANAGED CARE PLANS.—In the case of an individual who is participating in a State demonstration program and is enrolled with a medicaid managed care organization, the State shall enter into an arrangement with the organization under which the individual may obtain demonstration program medicaid services from any provider described in clause (ii) of subparagraph (A) at payment rates that do not exceed the payment rates that may be imposed under that clause.

''(C) COMPUTATION.—The payment rates described in subparagraphs (A) and (B) shall be computed without regard to any cost sharing that would be otherwise applicable under sections 1916 and 1916A.

''(D) DEFINITIONS.—For purposes of this paragraph:

''(i) The term 'demonstration program medicaid services' means, with respect to an individual participating in a State demonstration program, services for which the individual would be provided medical assistance under this title but for the application of the deductible described in paragraph (1)(A).

''(ii) The term 'participating provider' means—

''(I) with respect to an individual described in subparagraph (A), a health care provider that has entered into a participation agreement with the State for the provision of services to individuals entitled to benefits under the State plan; or

''(II) with respect to an individual described in subparagraph (B) who is enrolled in a medicaid managed care organization, a health care provider that has entered into an arrangement for the provision of services to enrollees of the organization under this title.

''(4) NO EFFECT ON SUBSEQUENT BENEFITS.—Except as provided under paragraphs (1) and (2), alternative benefits for an eligible individual shall consist of the benefits otherwise provided to the individual, including cost sharing relating to such benefits.

''(5) OVERRIDING COST SHARING AND COMPARABILITY REQUIREMENTS FOR ALTERNATIVE BENEFITS.—The provisions of this title relating to cost sharing for benefits (including sections 1916 and 1916A) shall not apply with respect to benefits to which the annual deductible under paragraph (1)(A) applies. The provisions of section 1902(a)(10)(B) (relating to comparability) shall not apply with respect to the provision of alternative benefits (as described in this subsection).

''(6) TREATMENT AS MEDICAL ASSISTANCE.—Subject to subparagraphs (D) and (E) of subsection (d)(2), payments for alternative benefits under this section (including contributions into a health opportunity account) shall be treated as medical assistance for purposes of section 1903(a).

''(7) USE OF TIERED DEDUCTIBLE AND COST SHARING.—

''(A) IN GENERAL.—A State—

''(i) may vary the amount of the annual deductible applied under paragraph (1)(A) based on the income of the family involved so long as it does not favor families with higher income over those with lower income; and

''(ii) may vary the amount of the maximum out-of-pocket cost sharing (as defined in subparagraph (B)) based on the income of the family involved so long as it does not favor families with higher income over those with lower income.

''(B) MAXIMUM OUT-OF-POCKET COST SHARING.—For purposes of subparagraph(A)(ii), the term 'maximum out-of-pocket cost sharing' means, for an individual or family, the amount by which the annual deductible level applied under paragraph (1)(A) to the individual or family exceeds the balance in the health opportunity account for the individual or family.

''(8) CONTRIBUTIONS BY EMPLOYERS.—Nothing in this section shall be construed as preventing an employer from providing health benefits coverage consisting of the coverage described in paragraph (1)(A) to individuals who are provided alternative benefits under this section.

''(d) HEALTH OPPORTUNITY ACCOUNT.—

''(1) IN GENERAL.—For purposes of this section, the term 'health opportunity account' means an account that meets the requirements of this subsection.

''(2) CONTRIBUTIONS.—

''(A) IN GENERAL.—No contribution may be made into a health opportunity account except—

''(i) contributions by the State under this title; and

''(ii) contributions by other persons and entities, such as charitable organizations, as permitted under section 1903(w).

''(B) STATE CONTRIBUTION.—A State shall specify the contribution amount that shall be deposited under subparagraph (A)(i) into a health opportunity account.

''(C) LIMITATION ON ANNUAL STATE CONTRIBUTION PROVIDED AND PERMITTING IMPOSITION OF MAXIMUM ACCOUNT BALANCE.—

''(i) IN GENERAL.—A State—

''(I) may impose limitations on the maximum contributions that may be deposited under subparagraph (A)(i) into a health opportunity account in a year;

''(II) may limit contributions into such an account once the balance in the account reaches a level specified by the State; and

''(III) subject to clauses (ii) and (iii) and subparagraph (D)(i), may not provide contributions described in subparagraph (A)(i) to a health opportunity account on behalf of an individual or family to the extent the amount of such contributions (including both State and Federal shares) exceeds, on an annual basis, $2,500 for each individual (or family member) who is an adult and $1,000 for each individual (or family member) who is a child.

''(ii) INDEXING OF DOLLAR LIMITATIONS.—For each year after 2006, the dollar amounts specified in clause (i)(III) shall be annually increased by the Secretary by a percentage that reflects the annual percentage increase in the medical care component of the consumer price index for all urban consumers.

''(iii) BUDGET NEUTRAL ADJUSTMENT.—A State may provide for dollar limitations in excess of those specified in clause (i)(III) (as increased under clause (ii)) for specified individuals if the State provides assurances satisfactory to the Secretary that contributions otherwise made to other individuals will be reduced in a manner so as to provide for aggregate contributions that do not exceed the aggregate contributions that would otherwise be permitted under this subparagraph.

''(D) LIMITATIONS ON FEDERAL MATCHING.—

''(i) STATE CONTRIBUTION.—A State may contribute under subparagraph (A)(i) amounts to a health opportunity account in excess of the limitations provided under subparagraph (C)(i)(III), but no Federal financial participation shall be provided under section 1903(a) with respect to contributions in excess of such limitations.

''(ii) NO FFP FOR PRIVATE CONTRIBUTIONS.—No Federal financial participation shall be provided under section 1903(a) with respect to any contributions described in subparagraph (A)(ii) to a health opportunity account.

''(E) APPLICATION OF DIFFERENT MATCHING RATES.—The Secretary shall provide a method under which, for expenditures made from a health opportunity account for medical care for which the Federal matching rate under section 1903(a) exceeds the Federal medical assistance percentage, a State may obtain payment under such section at such higher matching rate for such expenditures.

''(3) USE.—

''(A) GENERAL USES.—

''(i) IN GENERAL.—Subject to the succeeding provisions of this paragraph, amounts in a health opportunity account may be used for payment of such health care expenditures as the State specifies.

''(ii) GENERAL LIMITATION.—Subject to subparagraph (B)(ii), in no case shall such account be used for payment for health care expenditures that are not payment of medical care (as defined by section 213(d) of the Internal Revenue Code of 1986).

''(iii) STATE RESTRICTIONS.—In applying clause (i), a State may restrict payment for—

''(I) providers of items and services to providers that are licensed or otherwise authorized under State law to provide the item or service and may deny payment for such a provider on the basis that the provider has been found, whether with respect to this title or any other health benefit program, to have failed to meet quality standards or to have committed 1 or more acts of fraud or abuse; and

''(II) items and services insofar as the State finds they are not medically appropriate or necessary.

''(iv) ELECTRONIC WITHDRAWALS.—The State demonstration program shall provide for a method whereby withdrawals may be made from the account for such purposes using an electronic system and shall not permit withdrawals from the account in cash.

''(B) MAINTENANCE OF HEALTH OPPORTUNITY ACCOUNT AFTER BECOMING INELIGIBLE FOR PUBLIC BENEFIT.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, if an account holder

of a health opportunity account becomes ineligible for benefits under this title because of an increase in income or assets—

''(I) no additional contribution shall be made into the account under paragraph (2)(A)(i);

''(II) subject to clause (iii), the balance in the account shall be reduced by 25 percent; and

''(III) subject to the succeeding provisions of this subparagraph, the account shall remain available to the account holder for 3 years after the date on which the individual becomes ineligible for such benefits for withdrawals under the same terms and conditions as if the account holder remained eligible for such benefits, and such withdrawals shall be treated as medical assistance in accordance with subsection (c)(6).

''(ii) SPECIAL RULES.—Withdrawals under this subparagraph from an account—

''(I) shall be available for the purchase of health insurance coverage; and

''(II) may, subject to clause (iv), be made available (at the option of the State) for such additional expenditures (such as job training and tuition expenses) specified by the State (and approved by the Secretary) as the State may specify.

''(iii) EXCEPTION FROM 25 PERCENT SAVINGS TO GOVERNMENT FOR PRIVATE CONTRIBUTIONS.—Clause (i)(II) shall not apply to the portion of the account that is attributable to contributions described in paragraph (2)(A)(ii). For purposes of accounting for such contributions, withdrawals from a health opportunity account shall first be attributed to contributions described in paragraph (2)(A)(i).

''(iv) CONDITION FOR NON-HEALTH WITHDRAWALS.—No withdrawal may be made from an account under clause (ii)(II) unless the accountholder has participated in the program under this section for at least 1 year.

''(v) NO REQUIREMENT FOR CONTINUATION OF COVERAGE.—An account holder of a health opportunity account, after becoming ineligible for medical assistance under this title, is not required to purchase high-deductible or other insurance as a condition of maintaining or using the account.

''(4) ADMINISTRATION.—A State may coordinate administration of health opportunity accounts through the use of a third party administrator and reasonable expenditures for the use of such administrator shall be reimbursable to the State in the same manner as other administrative expenditures under section 1903(a)(7).

''(5) TREATMENT.—Amounts in, or contributed to, a health opportunity account shall not be counted as income or assets for purposes of determining eligibility for benefits under this title.

''(6) UNAUTHORIZED WITHDRAWALS.—A State may establish procedures—

''(A) to penalize or remove an individual from the health opportunity account based on nonqualified withdrawals by the individual from such an account; and

''(B) to recoup costs that derive from such nonqualified withdrawals.''.

**SEC. 6083. STATE OPTION TO ESTABLISH NON-EMERGENCY MEDICAL TRANSPORTATION PROGRAM.**

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by sections 6033(a) and 6035(b), is amended—

(1) in paragraph (68), by striking ''and'' at the end;

(2) in paragraph (69) by striking the period at the end and inserting ''; and''; and

(3) by inserting after paragraph (69) the following:

''(70) at the option of the State and notwithstanding paragraphs (1), (10)(B), and (23), provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide transportation for individuals eligible for medical assistance under the State plan who need access to medical care or services and have no other means of transportation which—

''(A) may include a wheelchair van, taxi, stretcher car, bus passes and tickets, secured transportation, and such other transportation as the Secretary determines appropriate; and

''(B) may be conducted under contract with a broker who—

''(i) is selected through a competitive bidding process based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs;

''(ii) has oversight procedures to monitor beneficiary access and complaints and ensure that transport personnel are licensed, qualified, competent, and courteous;

''(iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services; and

''(iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on the prohibitions on physician referrals under section 1877 and such other prohibitions and requirements as the Secretary determines to be appropriate).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date of the enactment of this Act.

**SEC. 6084. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA) AND ABSTINENCE EDUCATION PROGRAM.**

Effective as if enacted on December 31, 2005, activities authorized by sections 510 and 1925 of the Social Security Act shall continue through December 31, 2006, in the manner authorized for fiscal year 2005, notwithstanding section 1902(e)(1)(A) of such Act, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the first quarter of fiscal year 2007 at the level provided for such activities through the first quarter of fiscal year 2006.

**SEC. 6085. EMERGENCY SERVICES FURNISHED BY NON-CONTRACT PROVIDERS FOR MEDICAID MANAGED CARE ENROLLEES.**

(a) IN GENERAL.—Section 1932(b)(2) of the Social Security Act (42 U.S.C. 1396u–2(b)(2)) is amended by adding at the end the following new subparagraph:

''(D) EMERGENCY SERVICES FURNISHED BY NON-CONTRACT PROVIDERS.—Any provider of emergency services that does not have in effect a contract with a medicaid managed care entity that establishes payment amounts for services furnished to a beneficiary enrolled in the entity's Medicaid managed care plan must accept as payment in full no more than the amounts (less any payments for indirect costs of medical education and direct costs of graduate medical education) that it could collect if the beneficiary received medical assistance under this title other than through enrollment in such an entity. In a State where rates paid to hospitals under the State plan are negotiated by contract and not publicly released, the payment amount applicable under this subparagraph shall be the average contract rate that would apply under the State plan for general acute care hospitals or the average contract rate that would apply under such plan for tertiary hospitals.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2007.

**SEC. 6086. EXPANDED ACCESS TO HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY AND DISABLED.**

(a) HOME AND COMMUNITY-BASED SERVICES AS AN OPTIONAL BENEFIT FOR ELDERLY AND DISABLED INDIVIDUALS.—Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended by adding at the end the following new subsection:

''(i) STATE PLAN AMENDMENT OPTION TO PROVIDE HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND DISABLED INDIVIDUALS.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, a State may provide through a State plan amendment for the provision of medical assistance for home and community-based services (within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and not including room and board or such other services requested by the State as the Secretary may approve) for individuals eligible for medical assistance under the State plan whose income does not exceed 150 percent of the poverty line (as defined in section 2110(c)(5)), without determining that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded, but only if the State meets the following requirements:

''(A) NEEDS-BASED CRITERIA FOR ELIGIBILITY FOR, AND RECEIPT OF, HOME AND COMMUNITY-BASED SERVICES.—The State establishes needs-based criteria for determining an individual's eligibility under the State plan for medical assistance for such home and community-based services, and if the individual is eligible for such services, the specific home and community-based services that the individual will receive.

''(B) ESTABLISHMENT OF MORE STRINGENT NEEDS-BASED ELIGIBILITY CRITERIA FOR INSTITUTIONALIZED CARE.—The State establishes needs-based criteria for determining whether an individual requires the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded under the State plan or under any waiver of such plan that are more stringent than the needs-based criteria established under subparagraph (A) for determining eligibility for home and community-based services.

''(C) PROJECTION OF NUMBER OF INDIVIDUALS TO BE PROVIDED HOME AND COMMUNITY-BASED SERVICES.—

''(i) IN GENERAL.—The State submits to the Secretary, in such form and manner, and upon such frequency as the Secretary shall specify, the projected number of individuals to be provided home and community-based services.

''(ii) AUTHORITY TO LIMIT NUMBER OF ELIGIBLE INDIVIDUALS.—A State may limit the number of individuals who are eligible for such services and may establish waiting lists for the receipt of such services.

''(D) CRITERIA BASED ON INDIVIDUAL ASSESSMENT.—

''(i) IN GENERAL.—The criteria established by the State for purposes of subparagraphs (A) and (B) requires an assessment of an individual's support needs and capabilities, and may take into account the inability of the individual to perform 2 or more activities of daily living (as defined in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986) or the need for significant assistance to perform such activities, and such other risk factors as the State determines to be appropriate.

''(ii) ADJUSTMENT AUTHORITY.—The State plan amendment provides the State with the option to modify the criteria established

under subparagraph (A) (without having to obtain prior approval from the Secretary) in the event that the enrollment of individuals eligible for home and community-based services exceeds the projected enrollment submitted for purposes of subparagraph (C), but only if—

''(I) the State provides at least 60 days notice to the Secretary and the public of the proposed modification;

''(II) the State deems an individual receiving home and community-based services on the basis of the most recent version of the criteria in effect prior to the effective date of the modification to be eligible for such services for a period of at least 12 months beginning on the date the individual first received medical assistance for such services; and

''(III) after the effective date of such modification, the State, at a minimum, applies the criteria for determining whether an individual requires the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded under the State plan or under any waiver of such plan which applied prior to the application of the more stringent criteria developed under subparagraph (B).

''(E) INDEPENDENT EVALUATION AND ASSESSMENT.—

''(i) ELIGIBILITY DETERMINATION.—The State uses an independent evaluation for making the determinations described in subparagraphs (A) and (B).

''(ii) ASSESSMENT.—In the case of an individual who is determined to be eligible for home and community-based services, the State uses an independent assessment, based on the needs of the individual to—

''(I) determine a necessary level of services and supports to be provided, consistent with an individual's physical and mental capacity;

''(II) prevent the provision of unnecessary or inappropriate care; and

''(III) establish an individualized care plan for the individual in accordance with subparagraph (G).

''(F) ASSESSMENT.—The independent assessment required under subparagraph (E)(ii) shall include the following:

''(i) An objective evaluation of an individual's inability to perform 2 or more activities of daily living (as defined in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986) or the need for significant assistance to perform such activities.

''(ii) A face-to-face evaluation of the individual by an individual trained in the assessment and evaluation of individuals whose physical or mental conditions trigger a potential need for home and community-based services.

''(iii) Where appropriate, consultation with the individual's family, spouse, guardian, or other responsible individual.

''(iv) Consultation with appropriate treating and consulting health and support professionals caring for the individual.

''(v) An examination of the individual's relevant history, medical records, and care and support needs, guided by best practices and research on effective strategies that result in improved health and quality of life outcomes.

''(vi) If the State offers individuals the option to self-direct the purchase of, or control the receipt of, home and community-based service, an evaluation of the ability of the individual or the individual's representative to self-direct the purchase of, or control the receipt of, such services if the individual so elects.

''(G) INDIVIDUALIZED CARE PLAN.—

''(i) IN GENERAL.—In the case of an individual who is determined to be eligible for home and community-based services, the State uses the independent assessment required under subparagraph (E)(ii) to establish a written individualized care plan for the individual.

''(ii) PLAN REQUIREMENTS.—The State ensures that the individualized care plan for an individual—

''(I) is developed—

''(aa) in consultation with the individual, the individual's treating physician, health care or support professional, or other appropriate individuals, as defined by the State, and, where appropriate the individual's family, caregiver, or representative; and

''(bb) taking into account the extent of, and need for, any family or other supports for the individual;

''(II) identifies the necessary home and community-based services to be furnished to the individual (or, if the individual elects to self-direct the purchase of, or control the receipt of, such services, funded for the individual); and

''(III) is reviewed at least annually and as needed when there is a significant change in the individual's circumstances.

''(iii) STATE OPTION TO OFFER ELECTION FOR SELF-DIRECTED SERVICES.—

''(I) INDIVIDUAL CHOICE.—At the option of the State, the State may allow an individual or the individual's representative to elect to receive self-directed home and community-based services in a manner which gives them the most control over such services consistent with the individual's abilities and the requirements of subclauses (II) and (III).

''(II) SELF-DIRECTED SERVICES.—The term 'self-directed' means, with respect to the home and community-based services offered under the State plan amendment, such services for the individual which are planned and purchased under the direction and control of such individual or the individual's authorized representative, including the amount, duration, scope, provider, and location of such services, under the State plan consistent with the following requirements:

''(aa) ASSESSMENT.—There is an assessment of the needs, capabilities, and preferences of the individual with respect to such services.

''(bb) SERVICE PLAN.—Based on such assessment, there is developed jointly with such individual or the individual's authorized representative a plan for such services for such individual that is approved by the State and that satisfies the requirements of subclause (III).

''(III) PLAN REQUIREMENTS.—For purposes of subclause (II)(bb), the requirements of this subclause are that the plan—

''(aa) specifies those services which the individual or the individual's authorized representative would be responsible for directing;

''(bb) identifies the methods by which the individual or the individual's authorized representative will select, manage, and dismiss providers of such services;

''(cc) specifies the role of family members and others whose participation is sought by the individual or the individual's authorized representative with respect to such services;

''(dd) is developed through a person-centered process that is directed by the individual or the individual's authorized representative, builds upon the individual's capacity to engage in activities that promote community life and that respects the individual's preferences, choices, and abilities, and involves families, friends, and professionals as desired or required by the individual or the individual's authorized representative;

''(ee) includes appropriate risk management techniques that recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan based upon the resources and capabilities of the individual or the individual's authorized representative; and

''(ff) may include an individualized budget which identifies the dollar value of the services and supports under the control and direction of the individual or the individual's authorized representative.

''(IV) BUDGET PROCESS.—With respect to individualized budgets described in subclause (III)(ff), the State plan amendment—

''(aa) describes the method for calculating the dollar values in such budgets based on reliable costs and service utilization;

''(bb) defines a process for making adjustments in such dollar values to reflect changes in individual assessments and service plans; and

''(cc) provides a procedure to evaluate expenditures under such budgets.

''(H) QUALITY ASSURANCE; CONFLICT OF INTEREST STANDARDS.—

''(i) QUALITY ASSURANCE.—The State ensures that the provision of home and community-based services meets Federal and State guidelines for quality assurance.

''(ii) CONFLICT OF INTEREST STANDARDS.—The State establishes standards for the conduct of the independent evaluation and the independent assessment to safeguard against conflicts of interest.

''(I) REDETERMINATIONS AND APPEALS.—The State allows for at least annual redeterminations of eligibility, and appeals in accordance with the frequency of, and manner in which, redeterminations and appeals of eligibility are made under the State plan.

''(J) PRESUMPTIVE ELIGIBILITY FOR ASSESSMENT.—The State, at its option, elects to provide for a period of presumptive eligibility (not to exceed a period of 60 days) only for those individuals that the State has reason to believe may be eligible for home and community-based services. Such presumptive eligibility shall be limited to medical assistance for carrying out the independent evaluation and assessment under subparagraph (E) to determine an individual's eligibility for such services and if the individual is so eligible, the specific home and community-based services that the individual will receive.

''(2) DEFINITION OF INDIVIDUAL'S REPRESENTATIVE.—In this section, the term 'individual's representative' means, with respect to an individual, a parent, a family member, or a guardian of the individual, an advocate for the individual, or any other individual who is authorized to represent the individual.

''(3) NONAPPLICATION.—A State may elect in the State plan amendment approved under this section to not comply with the requirements of section 1902(a)(1) (relating to statewideness) and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community), but only for purposes of provided home and community-based services in accordance with such amendment. Any such election shall not be construed to apply to the provision of services to an individual receiving medical assistance in an institutionalized setting as a result of a determination that the individual requires the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded.

''(4) NO EFFECT ON OTHER WAIVER AUTHORITY.—Nothing in this subsection shall be construed as affecting the option of a State to offer home and community-based services under a waiver under subsections (c) or (d) of this section or under section 1115.

''(5) CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION FOR MEDICAL ASSISTANCE PROVIDED TO INDIVIDUALS AS OF EFFECTIVE DATE

OF STATE PLAN AMENDMENT.—Notwithstanding paragraph (1)(B), Federal financial participation shall continue to be available for an individual who is receiving medical assistance in an institutionalized setting, or home and community-based services provided under a waiver under this section or section 1115 that is in effect as of the effective date of the State plan amendment submitted under this subsection, as a result of a determination that the individual requires the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded, without regard to whether such individuals satisfy the more stringent eligibility criteria established under that paragraph, until such time as the individual is discharged from the institution or waiver program or no longer requires such level of care.''.

(b) QUALITY OF CARE MEASURES.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall consult with consumers, health and social service providers and other professionals knowledgeable about long-term care services and supports to develop program performance indicators, client function indicators, and measures of client satisfaction with respect to home and community-based services offered under State Medicaid programs.

(2) BEST PRACTICES.—The Secretary shall—

(A) use the indicators and measures developed under paragraph (1) to assess such home and community-based services, the outcomes associated with the receipt of such services (particularly with respect to the health and welfare of the recipient of the services), and the overall system for providing home and community-based services under the Medicaid program under title XIX of the Social Security Act; and

(B) make publicly available the best practices identified through such assessment and a comparative analyses of the system features of each State.

(3) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services, $1,000,000 for the period of fiscal years 2006 through 2010 to carry out this subsection.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect on January 1, 2007, and apply to expenditures for medical assistance for home and community-based services provided in accordance with section 1915(i) of the Social Security Act (as added by subsections (a) and (b)) on or after that date.

**SEC. 6087. OPTIONAL CHOICE OF SELF-DIRECTED PERSONAL ASSISTANCE SERVICES (CASH AND COUNSELING).**

(a) EXEMPTION FROM CERTAIN REQUIREMENTS.—Section 1915 of the Social Security Act (42 U.S.C. 1396n), as amended by section 6086(a), is amended by adding at the end the following new subsection:

''(j)(1) A State may provide, as 'medical assistance', payment for part or all of the cost of self-directed personal assistance services (other than room and board) under the plan which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that, but for the provision of such services, the individuals would require and receive personal care services under the plan, or home and community-based services provided pursuant to a waiver under subsection (c). Self-directed personal assistance services may not be provided under this subsection to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, not related by blood or marriage.

''(2) The Secretary shall not grant approval for a State self-directed personal assistance services program under this section unless the State provides assurances satisfactory to the Secretary of the following:

''(A) Necessary safeguards have been taken to protect the health and welfare of individuals provided services under the program, and to assure financial accountability for funds expended with respect to such services.

''(B) The State will provide, with respect to individuals who—

''(i) are entitled to medical assistance for personal care services under the plan, or receive home and community-based services under a waiver granted under subsection (c);

''(ii) may require self-directed personal assistance services; and

''(iii) may be eligible for self-directed personal assistance services,

an evaluation of the need for personal care under the plan, or personal services under a waiver granted under subsection (c).

''(C) Such individuals who are determined to be likely to require personal care under the plan, or home and community-based services under a waiver granted under subsection (c) are informed of the feasible alternatives, if available under the State's self-directed personal assistance services program, at the choice of such individuals, to the provision of personal care services under the plan, or personal assistance services under a waiver granted under subsection (c).

''(D) The State will provide for a support system that ensures participants in the self-directed personal assistance services program are appropriately assessed and counseled prior to enrollment and are able to manage their budgets. Additional counseling and management support may be provided at the request of the participant.

''(E) The State will provide to the Secretary an annual report on the number of individuals served and total expenditures on their behalf in the aggregate. The State shall also provide an evaluation of overall impact on the health and welfare of participating individuals compared to non-participants every three years.

''(3) A State may provide self-directed personal assistance services under the State plan without regard to the requirements of section 1902(a)(1) and may limit the population eligible to receive these services and limit the number of persons served without regard to section 1902(a)(10)(B).

''(4)(A) For purposes of this subsection, the term 'self-directed personal assistance services' means personal care and related services, or home and community-based services otherwise available under the plan under this title or subsection (c), that are provided to an eligible participant under a self-directed personal assistance services program under this section, under which individuals, within an approved self-directed services plan and budget, purchase personal assistance and related services, and permits participants to hire, fire, supervise, and manage the individuals providing such services.

''(B) At the election of the State—

''(i) a participant may choose to use any individual capable of providing the assigned tasks including legally liable relatives as paid providers of the services; and

''(ii) the individual may use the individual's budget to acquire items that increase independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

''(5) For purpose of this section, the term 'approved self-directed services plan and budget' means, with respect to a participant, the establishment of a plan and budget for the provision of self-directed personal assistance services, consistent with the following requirements:

''(A) SELF-DIRECTION.—The participant (or in the case of a participant who is a minor child, the participant's parent or guardian, or in the case of an incapacitated adult, another individual recognized by State law to act on behalf of the participant) exercises choice and control over the budget, planning, and purchase of self-directed personal assistance services, including the amount, duration, scope, provider, and location of service provision.

''(B) ASSESSMENT OF NEEDS.—There is an assessment of the needs, strengths, and preferences of the participants for such services.

''(C) SERVICE PLAN.—A plan for such services (and supports for such services) for the participant has been developed and approved by the State based on such assessment through a person-centered process that—

''(i) builds upon the participant's capacity to engage in activities that promote community life and that respects the participant's preferences, choices, and abilities; and

''(ii) involves families, friends, and professionals in the planning or delivery of services or supports as desired or required by the participant.

''(D) SERVICE BUDGET.—A budget for such services and supports for the participant has been developed and approved by the State based on such assessment and plan and on a methodology that uses valid, reliable cost data, is open to public inspection, and includes a calculation of the expected cost of such services if those services were not self-directed. The budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.

''(E) APPLICATION OF QUALITY ASSURANCE AND RISK MANAGEMENT.—There are appropriate quality assurance and risk management techniques used in establishing and implementing such plan and budget that recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities.

''(6) A State may employ a financial management entity to make payments to providers, track costs, and make reports under the program. Payment for the activities of the financial management entity shall be at the administrative rate established in section 1903(a).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 2007.

## Subtitle B—SCHIP

**SEC. 6101. ADDITIONAL ALLOTMENTS TO ELIMINATE FISCAL YEAR 2006 FUNDING SHORTFALLS.**

(a) IN GENERAL.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by inserting after subsection (c) the following:

''(d) ADDITIONAL ALLOTMENTS TO ELIMINATE FUNDING SHORTFALLS.—

''(1) APPROPRIATION; ALLOTMENT AUTHORITY.—For the purpose of providing additional allotments to shortfall States described in paragraph (2), there is appropriated, out of any money in the Treasury not otherwise appropriated, $283,000,000 for fiscal year 2006.

''(2) SHORTFALL STATES DESCRIBED.—For purposes of paragraph (1), a shortfall State described in this paragraph is a State with a State child health plan approved under this title for which the Secretary estimates, on the basis of the most recent data available to the Secretary as of December 16, 2005, that the projected expenditures under such plan for such State for fiscal year 2006 will exceed the sum of—

''(A) the amount of the State's allotments for each of fiscal years 2004 and 2005 that will not be expended by the end of fiscal year 2005;

''(B) the amount, if any, that is to redistributed to the State during fiscal year 2006 in accordance with subsection (f); and

''(C) the amount of the State's allotment for fiscal year 2006.

''(3) ALLOTMENTS.—In addition to the allotments provided under subsections (b) and (c), subject to paragraph (4), of the amount available for the additional allotments under paragraph (1) for fiscal year 2006, the Secretary shall allot—

''(A) to each shortfall State described in paragraph (2) such amount as the Secretary determines will eliminate the estimated shortfall described in such paragraph for the State; and

''(B) to each commonwealth or territory described in subsection (c)(3), the same proportion as the proportion of the commonwealth's or territory's allotment under subsection (c) (determined without regard to subsection (f)) to 1.05 percent of the amount appropriated under paragraph (1).

''(4) USE OF ADDITIONAL ALLOTMENT.—Additional allotments provided under this subsection are only available for amounts expended under a State plan approved under this title for child health assistance for targeted low-income children.

''(5) 1-YEAR AVAILABILITY; NO REDISTRIBUTION OF UNEXPENDED ADDITIONAL ALLOTMENTS.—Notwithstanding subsections (e) and (f), amounts allotted to a State pursuant to this subsection for fiscal year 2006 shall only remain available for expenditure by the State through September 30, 2006. Any amounts of such allotments that remain unexpended as of such date shall not be subject to redistribution under subsection (f) and shall revert to the Treasury on October 1, 2006.''.

(b) CONFORMING AMENDMENTS.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended—

(1) in subsection (a), by inserting ''subject to subsection (d),'' after ''under this section,'';

(2) in subsection (b)(1), by inserting ''and subsection (d)'' after ''Subject to paragraph (4)''; and

(3) in subsection (c)(1), by inserting ''subject to subsection (d),'' after ''for a fiscal year,''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to items and services furnished on or after October 1, 2005, without regard to whether or not regulations implementing such amendments have been issued.

**SEC. 6102. PROHIBITION AGAINST COVERING NONPREGNANT CHILDLESS ADULTS WITH SCHIP FUNDS.**

(a) PROHIBITION ON USE OF SCHIP FUNDS.—Section 2107 of the Social Security Act (42 U.S.C. 1397gg) is amended by adding at the end the following:

''(f) LIMITATION OF WAIVER AUTHORITY.—Notwithstanding subsection (e)(2)(A) and section 1115(a), the Secretary may not approve a waiver, experimental, pilot, or demonstration project that would allow funds made available under this title to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult. For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1931) shall not be considered a childless adult.''.

(b) CONFORMING AMENDMENTS.—Section 2105(c)(1) of such Act (42 U.S.C. 1397ee(c)(1)) is amended—

(1) by inserting ''and may not include coverage of a nonpregnant childless adult'' after ''section 2101)''; and

(2) by adding at the end the following: ''For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1931) shall not be considered a childless adult.''.

(c) RULE OF CONSTRUCTION.—Nothing in this section or the amendments made by this section shall be construed to—

(1) authorize the waiver of any provision of title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.) that is not otherwise authorized to be waived under such titles or under title XI of such Act (42 U.S.C. 1301 et seq.) as of the date of enactment of this Act;

(2) imply congressional approval of any waiver, experimental, pilot, or demonstration project affecting funds made available under the State children's health insurance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et. seq.) or any amendment to such a waiver or project that has been approved as of such date of enactment; or

(3) apply to any waiver, experimental, pilot, or demonstration project that would allow funds made available under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult that is approved before the date of enactment of this Act or to any extension, renewal, or amendment of such a waiver or project that is approved on or after such date of enactment.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect as if enacted on October 1, 2005, and shall apply to any waiver, experimental, pilot, or demonstration project that is approved on or after that date.

**SEC. 6103. CONTINUED AUTHORITY FOR QUALIFYING STATES TO USE CERTAIN FUNDS FOR MEDICAID EXPENDITURES.**

(a) IN GENERAL.—Section 2105(g)(1)(A) of the Social Security Act (42 U.S.C. 1397ee(g)(1)(A)) is amended by striking ''or 2001'' and inserting ''2001, 2004, or 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenditures made under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after October 1, 2005.

## Subtitle C—Katrina Relief

**SEC. 6201. ADDITIONAL FEDERAL PAYMENTS UNDER HURRICANE-RELATED MULTI-STATE SECTION 1115 DEMONSTRATIONS.**

(a) IN GENERAL.—The Secretary of Health and Human Services shall pay to each eligible State, from amounts appropriated pursuant to subsection (e), amounts for the following purposes:

(1) Under the authority of an approved Multi-State Section 1115 Demonstration Project (in this section referred to as an ''section 1115 project'')—

(A) with respect to evacuees receiving health care under such project, for the non-Federal share of expenditures:

(i) for medical assistance furnished under title XIX of the Social Security Act, and

(ii) for child health assistance furnished under title XXI of such Act;

(B) with respect to evacuees who do not have other coverage for such assistance through insurance, including (but not limited to) private insurance, under title XIX or title XXI of the Social Security Act, or under State-funded health insurance programs, for the total uncompensated care costs incurred for medically necessary services and supplies or premium assistance for such persons, and for those evacuees receiving medical assistance under the project for the total uncompensated care costs incurred for medically necessary services and supplies beyond those included as medical assistance or child health assistance under the State's approved plan under title XIX or title XXI of the Social Security Act;

(C) with respect to affected individuals receiving health care under such project for the non-Federal share of the following expenditures:

(i) for medical assistance furnished under title XIX of the Social Security Act, and

(ii) for child health assistance furnished under title XXI of such Act; and

(D) with respect to affected individuals who do not have other coverage for such assistance through insurance, including (but not limited to) private insurance, under title XIX or title XXI of the Social Security Act, or under State-funded health insurance programs, for the total uncompensated care costs incurred for medically necessary services and supplies or premium assistance for such persons, and for those affected individuals receiving medical assistance under the project for the total uncompensated care costs incurred for medically necessary services and supplies beyond those included as medical assistance or child health assistance under the State's approved plan under title XIX or title XXI of the Social Security Act.

(2) For reimbursement of the reasonable administrative costs related to subparagraphs (A) through (D) of paragraph (1) as determined by the Secretary.

(3) Only with respect to affected counties or parishes, for reimbursement with respect to individuals receiving medical assistance under existing State plans approved by the Secretary of Health and Human Services for the following non-Federal share of expenditures:

(A) For medical assistance furnished under title XIX of the Social Security Act.

(B) For child health assistance furnished under title XXI of such Act.

(4) For other purposes, if approved by the Secretary under the Secretary's authority, to restore access to health care in impacted communities.

(b) DEFINITIONS.—For purposes of this section:

(1) The term ''affected individual'' means an individual who resided in an individual assistance designation county or parish pursuant to section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as declared by the President as a result of Hurricane Katrina and continues to reside in the same State that such county or parish is located in.

(2) The term ''affected counties or parishes'' means a county or parish described in paragraph (1).

(3) The term ''evacuee'' means an affected individual who has been displaced to another State.

(4) The term ''eligible State'' means a State that has provided care to affected individuals or evacuees under a section 1115 project.

(c) APPLICATION TO MATCHING REQUIREMENTS.—The non-Federal share paid under this section shall not be regarded as Federal funds for purposes of Medicaid matching requirements, the effect of which is to provide fiscal relief to the State in which the Medicaid eligible individual originally resided.

(d) TIME LIMITS ON PAYMENTS.—

(1) No payments shall be made by the Secretary under subsection (a)(1)(A) or (a)(1)(C), for costs of health care provided to an eligible evacuee or affected individual for services for such individual incurred after June 30, 2006.

(2) No payments shall be made by the Secretary under subsection (a)(1)(B) or (a)(1)(D) for costs of health care incurred after January 31, 2006.

(3) No payments may be made under subsection (a)(1)(B) or (a)(1)(D) for an item or

service that an evacuee or an affected individual has received from an individual or organization as part of a public or private hurricane relief effort.

(e) APPROPRIATIONS.—For the purpose of providing funds for payments under this section, in addition to any funds made available for the National Disaster Medical System under the Department of Homeland Security for health care costs related to Hurricane Katrina, including under a section 1115 project, there is appropriated out of any money in the Treasury not otherwise appropriated, $2,000,000,000, to remain available to the Secretary until expended. The total amount of payments made under subsection (a) may not exceed the total amount appropriated under this subsection.

**SEC. 6202. STATE HIGH RISK HEALTH INSURANCE POOL FUNDING.**

(a) IN GENERAL.—There are hereby authorized and appropriated for fiscal year 2006—

(1) $75,000,000 for grants under subsection (b)(1) of section 2745 of the Public Health Service Act (42 U.S.C. 300gg-45); and

(2) $15,000,000 for grants under subsection (a) of such section.

(b) TREATMENT.—The amount appropriated under—

(1) paragraph (1) shall be treated as if it had been appropriated under subsection (c)(2) of such section; and

(2) paragraph (2) shall be treated as if it had been appropriated under subsection (c)(1) of such section.

(c) REFERENCES.—Effective upon the enactment of the State High Risk Pool Funding Extension Act of 2005—

(1) subsection (a)(1) shall be applied by substituting ''subsections (b)(2) and (c)(3)'' for ''subsection ''(b)(1)'';

(2) subsection (b)(1) shall be applied by substituting ''(d)(1)(B)'' for ''(c)(2)''; and

(3) subsection (b)(2) shall be applied by substituting ''(d)(1)(A)'' for ''(c)(1)''.

**SEC. 6203. IMPLEMENTATION FUNDING.**

For purposes of implementing the provisions of, and amendments made by, title V of this Act and this title—

(1) the Secretary of Health and Human Services shall provide for the transfer, in appropriate part from 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), of $30,000,000 to the Centers for Medicare & Medicaid Services Program Management Account for fiscal year 2006; and

(2) out of any funds in the Treasury not otherwise appropriated, there are appropriated to such Secretary for the Centers for Medicare & Medicaid Services Program Management Account, $30,000,000 for fiscal year 2006.

## TITLE VII—HUMAN RESOURCES AND OTHER PROVISIONS

**SEC. 7002. REFERENCES.**

Except as otherwise expressly provided, wherever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Social Security Act.

### Subtitle A—TANF

**SEC. 7101. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND RELATED PROGRAMS FUNDING THROUGH SEPTEMBER 30, 2010.**

(a) IN GENERAL.—Activities authorized by part A of title IV and section 1108(b) of the Social Security Act (adjusted, as applicable, by or under this subtitle, the amendments made by this subtitle, and the TANF Emergency Response and Recovery Act of 2005) shall continue through September 30, 2010, in the manner authorized for fiscal year 2004, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority on a quarterly basis through fiscal year 2010 at the level provided for such activities for the corresponding quarter of fiscal year 2004 (or, as applicable, at such greater level as may result from the application of this subtitle, the amendments made by this subtitle, and the TANF Emergency Response and Recovery Act of 2005), except that in the case of section 403(a)(3) of the Social Security Act, grants and payments may be made pursuant to this authority only through fiscal year 2008 and in the case of section 403(a)(4) of the Social Security Act, no grants shall be made for any fiscal year occurring after fiscal year 2005.

(b) CONFORMING AMENDMENTS.—Part A of title IV (42 U.S.C. 601 et seq.) is amended—

(1) in section 403(a)(3)(H)(ii), by striking ''December, 31, 2005'' and inserting ''fiscal year 2008'';

(2) in section 403(b)(3)(C)(ii), by striking ''2006'' and inserting ''2010''; and

(3) in section 409(a)(7)—

(A) in subparagraph (A), by striking ''or 2007'' and inserting ''2007, 2008, 2009, 2010, or 2011''; and

(B) in subparagraph (B)(ii), by striking ''2006'' and inserting ''2010''.

(c) EXTENSION OF THE NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE THROUGH SEPTEMBER 30, 2010.—Activities authorized by section 429A of the Social Security Act shall continue through September 30, 2010, in the manner authorized for fiscal year 2004, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority on a quarterly basis through fiscal year 2010 at the level provided for such activities for the corresponding quarter of fiscal year 2004.

**SEC. 7102. IMPROVED CALCULATION OF WORK PARTICIPATION RATES AND PROGRAM INTEGRITY.**

(a) RECALIBRATION OF CASELOAD REDUCTION CREDIT.—

(1) IN GENERAL.—Section 407(b)(3)(A) (42 U.S.C. 607(b)(3)(A)) is amended—

(A) in clause (i), by inserting ''or any other State program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))'' after ''this part'' ; and

(B) by striking clause (ii) and inserting the following:

''(ii) the average monthly number of families that received assistance under any State program referred to in clause (i) during fiscal year 2005.''.

(2) CONFORMING AMENDMENT.—Section 407(b)(3)(B) (42 U.S.C. 607(b)(3)(B)) is amended by striking ''and eligibility criteria'' and all that follows through the close parenthesis and inserting ''and the eligibility criteria in effect during fiscal year 2005''.

(b) INCLUSION OF FAMILIES RECEIVING ASSISTANCE UNDER SEPARATE STATE PROGRAMS IN CALCULATION OF PARTICIPATION RATES.—

(1) Section 407 (42 U.S.C. 607) is amended in each of subsections (a)(1), (a)(2), (b)(1)(B)(i), (c)(2)(A)(i), (e)(1), and (e)(2), by inserting ''or any other State program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))'' after ''this part''.

(2) Section 411(a)(1) (42 U.S.C. 611(a)(1)) is amended—

(A) in subparagraph (A), by inserting ''or any other State program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))'' before the colon; and

(B) in subparagraph (B)(ii), by inserting ''and any other State programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))'' after ''this part''.

(c) IMPROVED VERIFICATION AND OVERSIGHT OF WORK PARTICIPATION.—

(1) IN GENERAL.—Section 407(i) (42 U.S.C. 607(i)) is amended to read as follows:

''(i) VERIFICATION OF WORK AND WORK-ELIGIBLE INDIVIDUALS IN ORDER TO IMPLEMENT REFORMS.—

''(1) SECRETARIAL DIRECTION AND OVERSIGHT.—

''(A) REGULATIONS FOR DETERMINING WHETHER ACTIVITIES MAY BE COUNTED AS 'WORK ACTIVITIES', HOW TO COUNT AND VERIFY REPORTED HOURS OF WORK, AND DETERMINING WHO IS A WORK-ELIGIBLE INDIVIDUAL.—

''(i) IN GENERAL.—Not later than June 30, 2006, the Secretary shall promulgate regulations to ensure consistent measurement of work participation rates under State programs funded under this part and State programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)), which shall include information with respect to—

''(I) determining whether an activity of a recipient of assistance may be treated as a work activity under subsection (d);

''(II) uniform methods for reporting hours of work by a recipient of assistance;

''(III) the type of documentation needed to verify reported hours of work by a recipient of assistance; and

''(IV) the circumstances under which a parent who resides with a child who is a recipient of assistance should be included in the work participation rates.

''(ii) ISSUANCE OF REGULATIONS ON AN INTERIM FINAL BASIS.—The regulations referred to in clause (i) may be effective and final immediately on an interim basis as of the date of publication of the regulations. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comment on the regulation after the date of publication. The Secretary may change or revise the regulation after the public comment period.

''(B) OVERSIGHT OF STATE PROCEDURES.—The Secretary shall review the State procedures established in accordance with paragraph (2) to ensure that such procedures are consistent with the regulations promulgated under subparagraph (A) and are adequate to ensure an accurate measurement of work participation under the State programs funded under this part and any other State programs funded with qualified State expenditures (as so defined).

''(2) REQUIREMENT FOR STATES TO ESTABLISH AND MAINTAIN WORK PARTICIPATION VERIFICATION PROCEDURES.—Not later than September 30, 2006, a State to which a grant is made under section 403 shall establish procedures for determining, with respect to recipients of assistance under the State program funded under this part or under any State programs funded with qualified State expenditures (as so defined), whether activities may be counted as work activities, how to count and verify reported hours of work, and who is a work-eligible individual, in accordance with the regulations promulgated pursuant to paragraph (1)(A)(i) and shall establish internal controls to ensure compliance with the procedures.''.

(2) STATE PENALTY FOR FAILURE TO ESTABLISH OR COMPLY WITH WORK PARTICIPATION VERIFICATION PROCEDURES.—Section 409(a) (42 U.S.C. 609(a)) is amended by adding at the end the following:

''(15) PENALTY FOR FAILURE TO ESTABLISH OR COMPLY WITH WORK PARTICIPATION VERIFICATION PROCEDURES.—

''(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made

under section 403 in a fiscal year has violated section 407(i)(2) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

''(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2006.

**SEC. 7103. GRANTS FOR HEALTHY MARRIAGE PROMOTION AND RESPONSIBLE FATHERHOOD.**

(a) HEALTHY MARRIAGE AND FAMILY FUNDS.—Section 403(a)(2) (42 U.S.C. 603(a)(2)) is amended to read as follows:

''(2) HEALTHY MARRIAGE PROMOTION AND RESPONSIBLE FATHERHOOD GRANTS.—

''(A) IN GENERAL.—

''(i) USE OF FUNDS.—Subject to subparagraphs (B) and (C), the Secretary may use the funds made available under subparagraph (D) for the purpose of conducting and supporting research and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribes and tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under another provision of this part.

''(ii) LIMITATIONS.—The Secretary may not award funds made available under this paragraph on a noncompetitive basis, and may not provide any such funds to an entity for the purpose of carrying out healthy marriage promotion activities or for the purpose of carrying out activities promoting responsible fatherhood unless the entity has submitted to the Secretary an application which—

''(I) describes—

''(aa) how the programs or activities proposed in the application will address, as appropriate, issues of domestic violence; and

''(bb) what the applicant will do, to the extent relevant, to ensure that participation in the programs or activities is voluntary, and to inform potential participants that their participation is voluntary; and

''(II) contains a commitment by the entity—

''(aa) to not use the funds for any other purpose; and

''(bb) to consult with experts in domestic violence or relevant community domestic violence coalitions in developing the programs and activities.

''(iii) HEALTHY MARRIAGE PROMOTION ACTIVITIES.—In clause (ii), the term 'healthy marriage promotion activities' means the following:

''(I) Public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health.

''(II) Education in high schools on the value of marriage, relationship skills, and budgeting.

''(III) Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers.

''(IV) Pre-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.

''(V) Marriage enhancement and marriage skills training programs for married couples.

''(VI) Divorce reduction programs that teach relationship skills.

''(VII) Marriage mentoring programs which use married couples as role models and mentors in at-risk communities.

''(VIII) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

''(B) LIMITATION ON USE OF FUNDS FOR DEMONSTRATION PROJECTS FOR COORDINATION OF PROVISION OF CHILD WELFARE AND TANF SERVICES TO TRIBAL FAMILIES AT RISK OF CHILD ABUSE OR NEGLECT.—

''(i) IN GENERAL.—Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than $2,000,000 on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

''(ii) LIMITATION ON USE OF FUNDS.—A grant made pursuant to clause (i) to such a project shall not be used for any purpose other than—

''(I) to improve case management for families eligible for assistance from such a tribal program;

''(II) for supportive services and assistance to tribal children in out-of-home placements and the tribal families caring for such children, including families who adopt such children; and

''(III) for prevention services and assistance to tribal families at risk of child abuse and neglect.

''(iii) REPORTS.—The Secretary may require a recipient of funds awarded under this subparagraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this subparagraph.

''(C) LIMITATION ON USE OF FUNDS FOR ACTIVITIES PROMOTING RESPONSIBLE FATHERHOOD.—

''(i) IN GENERAL.—Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than $50,000,000 on a competitive basis to States, territories, Indian tribes and tribal organizations, and public and nonprofit community entities, including religious organizations, for activities promoting responsible fatherhood.

''(ii) ACTIVITIES PROMOTING RESPONSIBLE FATHERHOOD.—In this paragraph, the term 'activities promoting responsible fatherhood' means the following:

''(I) Activities to promote marriage or sustain marriage through activities such as counseling, mentoring, disseminating information about the benefits of marriage and 2-parent involvement for children, enhancing relationship skills, education regarding how to control aggressive behavior, disseminating information on the causes of domestic violence and child abuse, marriage preparation programs, premarital counseling, marital inventories, skills-based marriage education, financial planning seminars, including improving a family's ability to effectively manage family business affairs by means such as education, counseling, or mentoring on matters related to family finances, including household management, budgeting, banking, and handling of financial transactions and home maintenance, and divorce education and reduction programs, including mediation and counseling.

''(II) Activities to promote responsible parenting through activities such as counseling, mentoring, and mediation, disseminating information about good parenting practices, skills-based parenting enducation, encouraging child support payments, and other methods.

''(III) Activities to foster economic stability by helping fathers improve their economic status by providing activities such as work first services, job search, job training, subsidized employment, job retention, job enhancement, and encouraging education, including career-advancing education, dissemination of employment materials, coordination with existing employment services such as welfare-to-work programs, referrals to local employment training initiatives, and other methods.

''(IV) Activities to promote responsible fatherhood that are conducted through a contract with a nationally recognized, nonprofit fatherhood promotion organization, such as the development, promotion, and distribution of a media campaign to encourage the appropriate involvement of parents in the life of any child and specifically the issue of responsible fatherhood, and the development of a national clearinghouse to assist States and communities in efforts to promote and support marriage and responsible fatherhood.

''(D) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $150,000,000 for each of fiscal years 2006 through 2010, for expenditure in accordance with this paragraph.''.

(b) COUNTING OF SPENDING ON CERTAIN PRO-FAMILY ACTIVITIES.—Section 409(a)(7)(B)(i) (42 U.S.C. 609(a)(7)(B)(i)) is amended by adding at the end the following:

''(V) COUNTING OF SPENDING ON CERTAIN PRO-FAMILY ACTIVITIES.—The term 'qualified State expenditures' includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 401(a).''.

**Subtitle B—Child Care**

**SEC. 7201. ENTITLEMENT FUNDING.**

Section 418(a)(3) (42 U.S.C. 618(a)(3)) is amended—

(1) by striking ''and'' at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting a semicolon; and

(3) by adding at the end the following:

''(G) $2,917,000,000 for each of fiscal years 2006 through 2010.''.

**Subtitle C—Child Support**

**SEC. 7301. ASSIGNMENT AND DISTRIBUTION OF CHILD SUPPORT.**

(a) MODIFICATION OF RULE REQUIRING ASSIGNMENT OF SUPPORT RIGHTS AS A CONDITION OF RECEIVING TANF.—Section 408(a)(3) (42 U.S.C. 608(a)(3)) is amended to read as follows:

''(3) NO ASSISTANCE FOR FAMILIES NOT ASSIGNING CERTAIN SUPPORT RIGHTS TO THE STATE.—A State to which a grant is made under section 403 shall require, as a condition of paying assistance to a family under the State program funded under this part, that a member of the family assign to the State any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, which accrues during the period that the family receives assistance under the program.''.

(b) INCREASING CHILD SUPPORT PAYMENTS TO FAMILIES AND SIMPLIFYING CHILD SUPPORT DISTRIBUTION RULES.—

(1) DISTRIBUTION RULES.—

(A) IN GENERAL.—Section 457(a) (42 U.S.C. 657(a)) is amended to read as follows:

''(a) IN GENERAL.—Subject to subsections (d) and (e), the amounts collected on behalf

of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

''(1) FAMILIES RECEIVING ASSISTANCE.—In the case of a family receiving assistance from the State, the State shall—

''(A) pay to the Federal Government the Federal share of the amount collected, subject to paragraph (3)(A);

''(B) retain, or pay to the family, the State share of the amount collected, subject to paragraph (3)(B); and

''(C) pay to the family any remaining amount.

''(2) FAMILIES THAT FORMERLY RECEIVED ASSISTANCE.—In the case of a family that formerly received assistance from the State:

''(A) CURRENT SUPPORT.—To the extent that the amount collected does not exceed the current support amount, the State shall pay the amount to the family.

''(B) ARREARAGES.—Except as otherwise provided in an election made under section 454(34), to the extent that the amount collected exceeds the current support amount, the State—

''(i) shall first pay to the family the excess amount, to the extent necessary to satisfy support arrearages not assigned pursuant to section 408(a)(3);

''(ii) if the amount collected exceeds the amount required to be paid to the family under clause (i), shall—

''(I) pay to the Federal Government the Federal share of the excess amount described in this clause, subject to paragraph (3)(A); and

''(II) retain, or pay to the family, the State share of the excess amount described in this clause, subject to paragraph (3)(B); and

''(iii) shall pay to the family any remaining amount.

''(3) LIMITATIONS.—

''(A) FEDERAL REIMBURSEMENTS.—The total of the amounts paid by the State to the Federal Government under paragraphs (1) and (2) of this subsection with respect to a family shall not exceed the Federal share of the amount assigned with respect to the family pursuant to section 408(a)(3).

''(B) STATE REIMBURSEMENTS.—The total of the amounts retained by the State under paragraphs (1) and (2) of this subsection with respect to a family shall not exceed the State share of the amount assigned with respect to the family pursuant to section 408(a)(3).

''(4) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).

''(5) FAMILIES UNDER CERTAIN AGREEMENTS.—Notwithstanding paragraphs (1) through (3), in the case of an amount collected for a family in accordance with a cooperative agreement under section 454(33), the State shall distribute the amount collected pursuant to the terms of the agreement.''.

(B) STATE OPTION TO PASS THROUGH ADDITIONAL SUPPORT WITH FEDERAL FINANCIAL PARTICIPATION BEGINNING WITH FISCAL YEAR 2009.—

(i) IN GENERAL.—Section 457(a) (42 U.S.C. 657(a)) is amended by adding at the end the following:

''(7) STATE OPTION TO PASS THROUGH ADDITIONAL SUPPORT WITH FEDERAL FINANCIAL PARTICIPATION.—

''(A) FAMILIES THAT FORMERLY RECEIVED ASSISTANCE.—Notwithstanding paragraph (2), a State shall not be required to pay to the Federal Government the Federal share of an amount collected on behalf of a family that formerly received assistance from the State to the extent that the State pays the amount to the family.

''(B) FAMILIES THAT CURRENTLY RECEIVE ASSISTANCE.—

''(i) IN GENERAL.—Notwithstanding paragraph (1), in the case of a family that receives assistance from the State, a State shall not be required to pay to the Federal Government the Federal share of the excepted portion (as defined in clause (ii)) of any amount collected on behalf of such family during a month to the extent that—

''(I) the State pays the excepted portion to the family; and

''(II) the excepted portion is disregarded in determining the amount and type of assistance provided to the family under such program.

''(ii) EXCEPTED PORTION DEFINED.—For purposes of this subparagraph, the term ''excepted portion'' means that portion of the amount collected on behalf of a family during a month that does not exceed $100 per month, or in the case of a family that includes 2 or more children, that does not exceed an amount established by the State that is not more than $200 per month.''.

(ii) EFFECTIVE DATE.—The amendment made by clause (i) shall take effect on October 1, 2008.

(iii) REDESIGNATION.—Effective October 1, 2009, paragraph (7) of section 457(a) of the Social Security Act (as added by clause (i)) is redesignated as paragraph (6).

(C) STATE PLAN TO INCLUDE ELECTION AS TO WHICH RULES TO APPLY IN DISTRIBUTING CHILD SUPPORT ARREARAGES COLLECTED ON BEHALF OF FAMILIES FORMERLY RECEIVING ASSISTANCE.—Section 454 (42 U.S.C. 654) is amended—

(i) by striking ''and'' at the end of paragraph (32);

(ii) by striking the period at the end of paragraph (33) and inserting ''; and''; and

(iii) by inserting after paragraph (33) the following:

''(34) include an election by the State to apply section 457(a)(2)(B) of this Act or former section 457(a)(2)(B) of this Act (as in effect for the State immediately before the date this paragraph first applies to the State) to the distribution of the amounts which are the subject of such sections and, for so long as the State elects to so apply such former section, the amendments made by subsection (b)(1) of section 7301 of the Deficit Reduction Act of 2005 shall not apply with respect to the State, notwithstanding subsection (e) of such section 7301.''.

(2) CURRENT SUPPORT AMOUNT DEFINED.—Section 457(c) (42 U.S.C. 657(c)) is amended by adding at the end the following:

''(5) CURRENT SUPPORT AMOUNT.—The term 'current support amount' means, with respect to amounts collected as support on behalf of a family, the amount designated as the monthly support obligation of the noncustodial parent in the order requiring the support or calculated by the State based on the order.''.

(c) STATE OPTION TO DISCONTINUE OLDER SUPPORT ASSIGNMENTS.—Section 457(b) (42 U.S.C. 657(b)) is amended to read as follows:

''(b) CONTINUATION OF ASSIGNMENTS.—

''(1) STATE OPTION TO DISCONTINUE PRE-1997 SUPPORT ASSIGNMENTS.—

''(A) IN GENERAL.—Any rights to support obligations assigned to a State as a condition of receiving assistance from the State under part A and in effect on September 30, 1997 (or such earlier date on or after August 22, 1996, as the State may choose), may remain assigned after such date.

''(B) DISTRIBUTION OF AMOUNTS AFTER ASSIGNMENT DISCONTINUATION.—If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).

''(2) STATE OPTION TO DISCONTINUE POST-1997 ASSIGNMENTS.—

''(A) IN GENERAL.—Any rights to support obligations accruing before the date on which a family first receives assistance under part A that are assigned to a State under that part and in effect before the implementation date of this section may remain assigned after such date.

''(B) DISTRIBUTION OF AMOUNTS AFTER ASSIGNMENT DISCONTINUATION.—If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).''.

(d) CONFORMING AMENDMENTS.—Section 6402(c) of the Internal Revenue Code of 1986 (relating to offset of past-due support against overpayments) is amended—

(1) in the first sentence, by striking ''the Social Security Act.'' and inserting ''of such Act.''; and

(2) by striking the third sentence and inserting the following: ''The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act before any other reductions allowed by law.''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by the preceding provisions of this section shall take effect on October 1, 2009, and shall apply to payments under parts A and D of title IV of the Social Security Act for calendar quarters beginning on or after such date, and without regard to whether regulations to implement the amendments (in the case of State programs operated under such part D) are promulgated by such date.

(2) STATE OPTION TO ACCELERATE EFFECTIVE DATE.—Notwithstanding paragraph (1), a State may elect to have the amendments made by the preceding provisions of this section apply to the State and to amounts collected by the State (and the payments under parts A and D), on and after such date as the State may select that is not earlier than October 1, 2008, and not later than September 30, 2009.

(f) USE OF TAX REFUND INTERCEPT PROGRAM TO COLLECT PAST-DUE CHILD SUPPORT ON BEHALF OF CHILDREN WHO ARE NOT MINORS.—

(1) IN GENERAL.—Section 464 (42 U.S.C. 664) is amended—

(A) in subsection (a)(2)(A), by striking ''(as that term is defined for purposes of this paragraph under subsection (c))''; and

(B) in subsection (c)—

(i) in paragraph (1)—

(I) by striking ''(1) Except as provided in paragraph (2), as used in'' and inserting ''In''; and

(II) by inserting ''(whether or not a minor)'' after ''a child'' each place it appears; and

(ii) by striking paragraphs (2) and (3).

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on October 1, 2007.

(g) STATE OPTION TO USE STATEWIDE AUTOMATED DATA PROCESSING AND INFORMATION RETRIEVAL SYSTEM FOR INTERSTATE CASES.—Section 466(a)(14)(A)(iii) (42 U.S.C. 666(a)(14)(A)(iii)) is amended by inserting before the semicolon the following: ''(but the assisting State may establish a corresponding case based on such other State's request for assistance)''.

**SEC. 7302. MANDATORY REVIEW AND ADJUSTMENT OF CHILD SUPPORT ORDERS FOR FAMILIES RECEIVING TANF.**

(a) IN GENERAL.—Section 466(a)(10)(A)(i) (42 U.S.C. 666(a)(10)(A)(i)) is amended—

(1) by striking ''parent, or,'' and inserting ''parent or''; and

(2) by striking ''upon the request of the State agency under the State plan or of either parent,''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2007.

**SEC. 7303. DECREASE IN AMOUNT OF CHILD SUPPORT ARREARAGE TRIGGERING PASSPORT DENIAL.**

(a) IN GENERAL.—Section 452(k)(1) (42 U.S.C. 652(k)(1)) is amended by striking ''$5,000'' and inserting ''$2,500''.

(b) CONFORMING AMENDMENT.—Section 454(31) (42 U.S.C. 654(31)) is amended by striking ''$5,000'' and inserting ''$2,500''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006.

**SEC. 7304. MAINTENANCE OF TECHNICAL ASSISTANCE FUNDING.**

Section 452(j) (42 U.S.C. 652(j)) is amended by inserting ''or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater'' before '', which shall be available''.

**SEC. 7305. MAINTENANCE OF FEDERAL PARENT LOCATOR SERVICE FUNDING.**

Section 453(o) (42 U.S.C. 653(o)) is amended—

(1) in the first sentence, by inserting ''or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater'' before '', which shall be available''; and

(2) in the second sentence, by striking ''for each of fiscal years 1997 through 2001''.

**SEC. 7306. INFORMATION COMPARISONS WITH INSURANCE DATA.**

(a) DUTIES OF THE SECRETARY.—Section 452 (42 U.S.C. 652) is amended by adding at the end the following:

''(l) COMPARISONS WITH INSURANCE INFORMATION.—

''(1) IN GENERAL.—The Secretary, through the Federal Parent Locator Service, may—

''(A) compare information concerning individuals owing past-due support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments; and

''(B) furnish information resulting from the data matches to the State agencies responsible for collecting child support from the individuals.

''(2) LIABILITY.—An insurer (including any agent of an insurer) shall not be liable under any Federal or State law to any person for any disclosure provided for under this subsection, or for any other action taken in good faith in accordance with this subsection.''.

(b) STATE REIMBURSEMENT OF FEDERAL COSTS.—Section 453(k)(3) (42 U.S.C. 653(k)(3)) is amended by inserting ''or section 452(l)'' after ''pursuant to this section''.

**SEC. 7307. REQUIREMENT THAT STATE CHILD SUPPORT ENFORCEMENT AGENCIES SEEK MEDICAL SUPPORT FOR CHILDREN FROM EITHER PARENT.**

(a) STATE AGENCIES REQUIRED TO SEEK MEDICAL SUPPORT FROM EITHER PARENT.—

(1) IN GENERAL.—Section 466(a)(19)(A) (42 U.S.C. 666(a)(19)(A)) is amended by striking ''which include a provision for the health care coverage of the child are enforced'' and inserting ''shall include a provision for medical support for the child to be provided by either or both parents, and shall be enforced''.

(2) CONFORMING AMENDMENTS.—

(A) TITLE IV–D.—

(i) Section 452(f) (42 U.S.C. 652(f)) is amended by striking ''include medical support as part of any child support order and enforce medical support'' and inserting ''enforce medical support included as part of a child support order''.

(ii) Section 466(a)(19) (42 U.S.C. 666(a)(19)), as amended by paragraph (1) of this subsection, is amended—

(I) in subparagraph (A)—

(aa) by striking ''section 401(e)(3)(C)'' and inserting ''section 401(e)''; and

(bb) by striking ''section 401(f)(5)(C)'' and inserting ''section 401(f)'';

(II) in subparagraph (B)—

(aa) by striking ''noncustodial'' each place it appears; and

(bb) in clause (iii), by striking ''section 466(b)'' and inserting ''subsection (b)''; and

(III) in subparagraph (C), by striking ''noncustodial'' each place it appears and inserting ''obligated''.

(B) STATE OR LOCAL GOVERNMENTAL GROUP HEALTH PLANS.—Section 401(e)(2) of the Child Support Performance and Incentive Act of 1998 (29 U.S.C. 1169 note) is amended, in the matter preceding subparagraph (A), by striking ''who is a noncustodial parent of the child''.

(C) CHURCH PLANS.—Section 401(f)(5)(C) of the Child Support Performance and Incentive Act of 1998 (29 U.S.C. 1169 note) is amended by striking ''noncustodial'' each place it appears.

(b) ENFORCEMENT OF MEDICAL SUPPORT REQUIREMENTS.—Section 452(f) (42 U.S.C. 652(f)), as amended by subsection (a)(2)(A)(i), is amended by inserting after the first sentence the following: ''A State agency administering the program under this part may enforce medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost, notwithstanding any other provision of this part.''.

(c) DEFINITION OF MEDICAL SUPPORT.—Section 452(f) (42 U.S.C. 652(f)), as amended by subsections (a)(2)(A)(i) and (b) of this section, is amended by adding at the end the following: ''For purposes of this part, the term 'medical support' may include health care coverage, such as coverage under a health insurance plan (including payment of costs of premiums, co-payments, and deductibles) and payment for medical expenses incurred on behalf of a child.''.

**SEC. 7308. REDUCTION OF FEDERAL MATCHING RATE FOR LABORATORY COSTS INCURRED IN DETERMINING PATERNITY.**

(a) IN GENERAL.—Section 455(a)(1)(C) (42 U.S.C. 655(a)(1)(C)) is amended by striking ''90 percent (rather than the percentage specified in subparagraph (A))'' and inserting ''66 percent''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2006, and shall apply to costs incurred on or after that date.

**SEC. 7309. ENDING FEDERAL MATCHING OF STATE SPENDING OF FEDERAL INCENTIVE PAYMENTS.**

(a) IN GENERAL.—Section 455(a)(1) (42 U.S.C. 655(a)(1)) is amended by inserting ''from amounts paid to the State under section 458 or'' before ''to carry out an agreement''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2007.

**SEC. 7310. MANDATORY FEE FOR SUCCESSFUL CHILD SUPPORT COLLECTION FOR FAMILY THAT HAS NEVER RECEIVED TANF.**

(a) IN GENERAL.—Section 454(6)(B) (42 U.S.C. 654(6)(B)) is amended—

(1) by inserting ''(i)'' after ''(B)'';

(2) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(3) by adding ''and'' after the semicolon; and

(4) by adding after and below the end the following new clause:

''(ii) in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least $500 of support, the State shall impose an annual fee of $25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the 1st $500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and the fees shall be considered income to the program);''.

(b) CONFORMING AMENDMENTS.—Section 457(a)(3) (42 U.S.C. 657(a)(3)) is amended to read as follows:

''(3) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006.

**SEC. 7311. EXCEPTION TO GENERAL EFFECTIVE DATE FOR STATE PLANS REQUIRING STATE LAW AMENDMENTS.**

In the case of a State plan under part D of title IV of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this subtitle, the effective date of the amendments imposing the additional requirements shall be 3 months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

## Subtitle D—Child Welfare

**SEC. 7401. STRENGTHENING COURTS.**

(a) COURT IMPROVEMENT GRANTS.—

(1) IN GENERAL.—Section 438(a) (42 U.S.C. 629h(a)) is amended—

(A) by striking ''and'' at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting a semicolon; and

(C) by adding at the end the following:

''(3) to ensure that the safety, permanence, and well-being needs of children are met in a timely and complete manner; and

''(4) to provide for the training of judges, attorneys and other legal personnel in child welfare cases.''.

(2) APPLICATIONS.—Section 438(b) (42 U.S.C. 629h(b)) is amended to read as follows:

''(b) APPLICATIONS.—

''(1) IN GENERAL.—In order to be eligible to receive a grant under this section, a highest State court shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary may require, including—

''(A) in the case of a grant for the purpose described in subsection (a)(3), a description of how courts and child welfare agencies on the local and State levels will collaborate and jointly plan for the collection and sharing of all relevant data and information to demonstrate how improved case tracking and analysis of child abuse and neglect cases will produce safe and timely permanency decisions;

''(B) in the case of a grant for the purpose described in subsection (a)(4), a demonstration that a portion of the grant will be used for cross-training initiatives that are jointly planned and executed with the State agency or any other agency under contract with the State to administer the State program under the State plan under subpart 1, the State plan approved under section 434, or the State plan approved under part E; and

''(C) in the case of a grant for any purpose described in subsection (a), a demonstration of meaningful and ongoing collaboration among the courts in the State, the State agency or any other agency under contract with the State who is responsible for administering the State program under part B or E, and, where applicable, Indian tribes.

''(2) SEPARATE APPLICATIONS.— A highest State court desiring grants under this section for 2 or more purposes shall submit separate applications for the following grants:

''(A) A grant for the purposes described in paragraphs (1) and (2) of subsection (a).

''(B) A grant for the purpose described in subsection (a)(3).

''(C) A grant for the purpose described in subsection (a)(4).''.

(3) ALLOTMENTS.—Section 438(c) (42 U.S.C. 429h(c)) is amended—

(A) in paragraph (1)—

(i) by inserting ''of this section for a grant described in subsection (b)(2)(A) of this section'' after ''subsection (b)''; and

(ii) by striking ''paragraph (2) of this subsection'' and inserting ''subparagraph (B) of this paragraph'';

(B) in paragraph (2)—

(i) by striking ''this paragraph'' and inserting ''this subparagraph'';

(ii) by striking ''paragraph (1) of this subsection'' and inserting ''subparagraph (A) of this paragraph''; and

(iii) by inserting ''for such a grant'' after ''subsection (b)'';

(C) by redesignating and indenting paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(D) by inserting before and above such subparagraph (A) the following:

''(1) GRANTS TO ASSESS AND IMPROVE HANDLING OF COURT PROCEEDINGS RELATING TO FOSTER CARE AND ADOPTION.—''; and

(E) by adding at the end the following:

''(2) GRANTS FOR IMPROVED DATA COLLECTION AND TRAINING.—

''(A) IN GENERAL.—Each highest State court which has an application approved under subsection (b) of this section for a grant referred to in subparagraph (B) or (C) of subsection (b)(2) shall be entitled to payment, for each of fiscal years 2006 through 2010, from the amount made available under whichever of paragraph (1) or (2) of subsection (e) applies with respect to the grant, of an amount equal to the sum of $85,000 plus the amount described in subparagraph (B) of this paragraph for the fiscal year with respect to the grant.

''(B) FORMULA.—The amount described in this subparagraph for any fiscal year with respect to a grant referred to in subparagraph (B) or (C) of subsection (b)(2) is the amount that bears the same ratio to the amount made available under subsection (e) for such a grant (reduced by the dollar amount specified in subparagraph (A) of this paragraph) as the number of individuals in the State who have not attained 21 years of age bears to the total number of such individuals in all States the highest State courts of which have approved applications under subsection (b) for such a grant.''.

(4) FUNDING.—Section 438 (42 U.S.C. 629h) is amended by adding at the end the following:

''(e) FUNDING FOR GRANTS FOR IMPROVED DATA COLLECTION AND TRAINING.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary, for each of fiscal years 2006 through 2010—

''(1) $10,000,000 for grants referred to in subsection (b)(2)(B); and

''(2) $10,000,000 for grants referred to in subsection (b)(2)(C).''.

(b) REQUIREMENT TO DEMONSTRATE MEANINGFUL COLLABORATION BETWEEN COURTS AND AGENCIES IN CHILD WELFARE SERVICES PROGRAMS.—Section 422(b) (42 U.S.C. 622(b)) is amended—

(1) by striking ''and'' at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting ''; and''; and

(3) by adding at the end the following:

''(15) demonstrate substantial, ongoing, and meaningful collaboration with State courts in the development and implementation of the State plan under subpart 1, the State plan approved under subpart 2, and the State plan approved under part E, and in the development and implementation of any program improvement plan required under section 1123A.''.

(c) USE OF CHILD WELFARE RECORDS IN STATE COURT PROCEEDINGS.—Section 471 (42 U.S.C. 671) is amended—

(1) in subsection (a)(8), by inserting ''subject to subsection (c),'' after ''(8)''; and

(2) by adding at the end the following:

''(c) USE OF CHILD WELFARE RECORDS IN STATE COURT PROCEEDINGS.—Subsection (a)(8) shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B or this part, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.''.

**SEC. 7402. FUNDING OF SAFE AND STABLE FAMILIES PROGRAMS.**

Section 436(a) (42 U.S.C. 629f(a)) is amended to read as follows:

''(a) AUTHORIZATION.—In addition to any amount otherwise made available to carry out this subpart, there are authorized to be appropriated to carry out this subpart $345,000,000 for fiscal year 2006. Notwithstanding the preceding sentence, the total amount authorized to be so appropriated for fiscal year 2006 under this subsection and under this subsection (as in effect before the date of the enactment of the Deficit Reduction Act of 2005) is $345,000,000.''.

**SEC. 7403. CLARIFICATION REGARDING FEDERAL MATCHING OF CERTAIN ADMINISTRATIVE COSTS UNDER THE FOSTER CARE MAINTENANCE PAYMENTS PROGRAM.**

(a) ADMINISTRATIVE COSTS RELATING TO UNLICENSED CARE.—Section 472 (42 U.S.C. 672) is amended by inserting after subsection (h) the following:

''(i) ADMINISTRATIVE COSTS ASSOCIATED WITH OTHERWISE ELIGIBLE CHILDREN NOT IN LICENSED FOSTER CARE SETTINGS.—Expenditures by a State that would be considered administrative expenditures for purposes of section 474(a)(3) if made with respect to a child who was residing in a foster family home or child-care institution shall be so considered with respect to a child not residing in such a home or institution—

''(1) in the case of a child who has been removed in accordance with subsection (a) of this section from the home of a relative specified in section 406(a) (as in effect on July 16, 1996), only for expenditures—

''(A) with respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster family home; or

''(B) with respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the State; and

''(2) in the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if—

''(A) reasonable efforts are being made in accordance with section 471(a)(15) to prevent the need for, or if necessary to pursue, removal of the child from the home; and

''(B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.''.

(b) CONFORMING AMENDMENT.—Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended by inserting ''subject to section 472(i)'' before ''an amount equal to''.

**SEC. 7404. CLARIFICATION OF ELIGIBILITY FOR FOSTER CARE MAINTENANCE PAYMENTS AND ADOPTION ASSISTANCE.**

(a) FOSTER CARE MAINTENANCE PAYMENTS.—Section 472(a) (42 U.S.C. 672(a)) is amended to read as follows:

''(a) IN GENERAL.—

''(1) ELIGIBILITY.—Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) into foster care if—

''(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and

''(B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

''(2) REMOVAL AND FOSTER CARE PLACEMENT REQUIREMENTS.—The removal and foster care placement of a child meet the requirements of this paragraph if—

''(A) the removal and foster care placement are in accordance with—

''(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

''(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 471(a)(15) for a child have been made;

''(B) the child's placement and care are the responsibility of—

''(i) the State agency administering the State plan approved under section 471; or

''(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and

''(C) the child has been placed in a foster family home or child-care institution.

''(3) AFDC ELIGIBILITY REQUIREMENT.—

''(A) IN GENERAL.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

''(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

''(ii)(I) would have received the aid in the home, in or for the month referred to in

clause (i), if application had been made therefor; or

''(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

''(B) RESOURCES DETERMINATION.—For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than $10,000 shall be considered a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of section 402(a)(7)(B)).

''(4) ELIGIBILITY OF CERTAIN ALIEN CHILDREN.—Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, if the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.''.

(b) ADOPTION ASSISTANCE.—Section 473(a)(2) (42 U.S.C. 673(a)(2)) is amended to read as follows:

''(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

''(i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

''(bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause;

''(II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

''(III) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and

''(ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

''(B) Section 472(a)(4) shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien described in such section.

''(C) A child shall be treated as meeting the requirements of this paragraph for the purpose of paragraph (1)(B)(ii) if the child—

''(i) meets the requirements of subparagraph (A)(ii);

''(ii) was determined eligible for adoption assistance payments under this part with respect to a prior adoption;

''(iii) is available for adoption because—

''(I) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or

''(II) the child's adoptive parents have died; and

''(iv) fails to meet the requirements of subparagraph (A) but would meet such requirements if—

''(I) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and

''(II) the prior adoption were treated as never having occurred.''.

### Subtitle E—Supplemental Security Income

**SEC. 7501. REVIEW OF STATE AGENCY BLINDNESS AND DISABILITY DETERMINATIONS.**

Section 1633 (42 U.S.C. 1383b) is amended by adding at the end the following:

''(e)(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this title on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled as of a specified onset date. The Commissioner of Social Security shall review such a determination before any action is taken to implement the determination.

''(2)(A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

''(i) at least 20 percent of all determinations referred to in paragraph (1) that are made in fiscal year 2006;

''(ii) at least 40 percent of all such determinations that are made in fiscal year 2007; and

''(iii) at least 50 percent of all such determinations that are made in fiscal year 2008 or thereafter.

''(B) In carrying out subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review the determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.''.

**SEC. 7502. PAYMENT OF CERTAIN LUMP SUM BENEFITS IN INSTALLMENTS UNDER THE SUPPLEMENTAL SECURITY INCOME PROGRAM.**

(a) IN GENERAL.—Section 1631(a)(10)(A)(i) (42 U.S.C. 1383(a)(10)(A)(i)) is amended by striking ''12'' and inserting ''3''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 3 months after the date of the enactment of this Act.

### Subtitle F—Repeal of Continued Dumping and Subsidy Offset

**SEC. 7601. REPEAL OF CONTINUED DUMPING AND SUBSIDY OFFSET.**

(a) REPEAL.—Effective upon the date of enactment of this Act, section 754 of the Tariff Act of 1930 (19 U.S.C. 1675c), and the item relating to section 754 in the table of contents for title VII of that Act, are repealed.

(b) DISTRIBUTIONS ON CERTAIN ENTRIES.—All duties on entries of goods made and filed before October 1, 2007, that would, but for subsection (a) of this section, be distributed under section 754 of the Tariff Act of 1930, shall be distributed as if section 754 of the Tariff Act of 1930 had not been repealed by subsection (a).

### Subtitle G—Effective Date

**SEC. 7701. EFFECTIVE DATE.**

Except as otherwise provided in this title, this title and the amendments made by this title shall take effect as if enacted on October 1, 2005.

## TITLE VIII—EDUCATION AND PENSION BENEFIT PROVISIONS

### Subtitle A—Higher Education Provisions

**SEC. 8001. SHORT TITLE; REFERENCE; EFFECTIVE DATE.**

(a) SHORT TITLE.—This subtitle may be cited as the ''Higher Education Reconciliation Act of 2005''.

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

(c) EFFECTIVE DATE.—Except as otherwise provided in this subtitle or the amendments made by this subtitle, the amendments made by this subtitle shall be effective July 1, 2006.

**SEC. 8002. MODIFICATION OF 50/50 RULE.**

Section 102(a)(3) (20 U.S.C. 1002(a)(3)) is amended—

(1) in subparagraph (A), by inserting ''(excluding courses offered by telecommunications as defined in section 484(*l*)(4))'' after ''courses by correspondence''; and

(2) in subparagraph (B), by inserting ''(excluding courses offered by telecommunications as defined in section 484(*l*)(4))'' after ''correspondence courses''.

**SEC. 8003. ACADEMIC COMPETITIVENESS GRANTS.**

Subpart 1 of part A of title IV (20 U.S.C. 1070a) is amended by adding after section 401 the following new section:

**''SEC. 401A. ACADEMIC COMPETITIVENESS GRANTS.**

''(b) ACADEMIC COMPETITIVENESS GRANT PROGRAM.—

''(1) ACADEMIC COMPETITIVENESS GRANTS AUTHORIZED.—The Secretary shall award grants, in the amounts specified in subsection (e)(1), to eligible students to assist the eligible students in paying their college education expenses.

''(2) ACADEMIC COMPETITIVENESS COUNCIL.—

''(A) ESTABLISHMENT.—There is established an Academic Competitiveness Council (referred to in this paragraph as the 'Council'). From the funds made available under subsection (f) for fiscal year 2006, $50,000 shall be available to the Council to carry out the duties described in subparagraph (B). The Council shall be chaired by the Secretary of Education, and the membership of the Council shall consist of officials from Federal agencies with responsibilities for managing existing Federal programs that promote mathematics and science (or designees of such officials with significant decision-making authority).

''(B) DUTIES.—The Council shall—

''(i) identify all Federal programs with a mathematics or science focus;

''(ii) identify the target populations being served by such programs;

''(iii) determine the effectiveness of such programs;

''(iv) identify areas of overlap or duplication in such programs; and

''(v) recommend ways to efficiently integrate and coordinate such programs.

''(C) REPORT.—Not later than one year after the date of enactment of the Higher Education Reconciliation Act of 2005, the Council shall transmit a report to each committee of Congress with jurisdiction over a Federal program identified under subparagraph (B)(i), detailing the findings and recommendations under subparagraph (B), including recommendations for legislative or administrative action.

''(c) DESIGNATION.—A grant under this section—

''(1) for the first or second academic year of a program of undergraduate education

shall be known as an 'Academic Competitiveness Grant'; and

''(2) for the third or fourth academic year of a program of undergraduate education shall be known as a 'National Science and Mathematics Access to Retain Talent Grant' or a 'National SMART Grant'.

''(d) DEFINITION OF ELIGIBLE STUDENT.—In this section the term 'eligible student' means a full-time student who, for the academic year for which the determination of eligibility is made—

''(1) is a citizen of the United States;

''(2) is eligible for a Federal Pell Grant; and

''(3) in the case of a student enrolled or accepted for enrollment in—

''(A) the first academic year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education—

''(i) has successfully completed, after January 1, 2006, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; and

''(ii) has not been previously enrolled in a program of undergraduate education;

''(B) the second academic year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education—

''(i) has successfully completed, after January 1, 2005, a rigorous secondary school program of study established by a State or local educational agency and recognized as such by the Secretary; and

''(ii) has obtained a cummulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) at the end of the first academic year of such program of undergraduate education; or

''(C) the third or fourth academic year of a program of undergraduate education at a four-year degree-granting institution of higher education—

''(i) is pursuing a major in—

''(I) the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or

''(II) a foreign language that the Secretary, in consultation with the Director of National Intelligence, determines is critical to the national security of the United States; and

''(ii) has obtained a cummulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) in the coursework required for the major described in clause (i).

''(e) GRANT AWARD.—

''(1) AMOUNTS.—

''(A) The Secretary shall award a grant under this section in the amount of—

''(i) $750 for an eligible student under subsection (d)(3)(A);

''(ii) $1,300 for an eligible student under subsection (d)(3)(B); or

''(iii) $4,000 for an eligible student under subsection (d)(3)(C).

''(B) Notwithstanding subparagraph (A)—

''(i) the amount of such grant, in combination with the Federal Pell Grant assistance and other student financial assistance available to such student, shall not exceed the student's cost of attendance;

''(ii) if the amount made available under subsection (f) for any fiscal year is less than the amount required to be provide grants to all eligible students in the amounts determined under subparagraph (A) and clause (i) of this subparagraph, then the amount of the grant to each eligible student shall be ratably reduced; and

''(iii) if additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced.

''(2) LIMITATIONS.—The Secretary shall not award a grant under this section—

''(A) to any student for an academic year of a program of undergraduate education described in subparagraph (A), (B), or (C) of subsection (d)(3) for which the student received credit before the date of enactment of the Higher Education Reconciliation Act of 2005; or

''(B) to any student for more than—

''(i) one academic year under subsection (d)(3)(A);

''(ii) one academic year under subsection (d)(3)(B); or

''(iii) two academic years under subsection (d)(3)(C).

''(f) FUNDING.—

''(1) AUTHORIZATION AND APPROPRIATION OF FUNDS.—There are authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Education to carry out this section—

''(A) $790,000,000 for fiscal year 2006;

''(B) $850,000,000 for fiscal year 2007;

''(C) $920,000,000 for fiscal year 2008;

''(D) $960,000,000 for fiscal year 2009; and

''(E) $1,010,000,000 for fiscal year 2010.

''(2) USE OF EXCESS FUNDS.—If, at the end of a fiscal year, the funds available for awarding grants under this section exceed the amount necessary to make such grants in the amounts authorized by subsection (e), then all of the excess funds shall remain available for awarding grants under this section during the subsequent fiscal year.

''(g) RECOGNITION OF PROGRAMS OF STUDY.—The Secretary shall recognize at least one rigorous secondary school program of study in each State under subsection (d)(3)(A) and (B) for the purpose of determining student eligibility under such subsection.

''(h) SUNSET PROVISION.—The authority to make grants under this section shall expire at the end of academic year 2010–2011.''.

**SEC. 8004. REAUTHORIZATION OF FEDERAL FAMILY EDUCATION LOAN PROGRAM.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 421(b)(5) (20 U.S.C. 1071(b)(5)) is amended by striking ''an administrative cost allowance'' and inserting ''a loan processing and issuance fee''.

(b) EXTENSION OF AUTHORITY.—

(1) FEDERAL INSURANCE LIMITATIONS.—Section 424(a) (20 U.S.C. 1074(a)) is amended—

(A) by striking ''2004'' and inserting ''2012''; and

(B) by striking ''2008'' and inserting ''2016''.

(2) GUARANTEED LOANS.—Section 428(a)(5) (20 U.S.C. 1078(a)(5)) is amended—

(A) by striking ''2004'' and inserting ''2012''; and

(B) by striking ''2008'' and inserting ''2016''.

(3) CONSOLIDATION LOANS.—Section 428C(e) (20 U.S.C. 1078–3(e)) is amended by striking ''2004'' and inserting ''2012''.

**SEC. 8005. LOAN LIMITS.**

(a) FEDERAL INSURANCE LIMITS.—Section 425(a)(1)(A) (20 U.S.C. 1075(a)(1)(A)) is amended—

(1) in clause (i)(I), by striking ''$2,625'' and inserting ''$3,500''; and

(2) in clause (ii)(I), by striking ''$3,500'' and inserting ''$4,500''.

(b) GUARANTEE LIMITS.—Section 428(b)(1)(A) (20 U.S.C. 1078(b)(1)(A)) is amended—

(1) in clause (i)(I), by striking ''$2,625'' and inserting ''$3,500''; and

(2) in clause (ii)(I), by striking ''$3,500'' and inserting ''$4,500''.

(c) FEDERAL PLUS LOANS.—Section 428B (20 U.S.C. 1078–2) is amended—

(1) in subsection (a)(1)—

(A) in the matter preceding subparagraph (A), by striking ''Parents'' and inserting ''A graduate or professional student or the parents'';

(B) in subparagraph (A), by striking ''the parents'' and inserting ''the graduate or professional student or the parents''; and

(C) in subparagraph (B), by striking ''the parents'' and inserting ''the graduate or professional student or the parents'';

(2) in subsection (b), by striking ''any parent'' and inserting ''any graduate or professional student or any parent'';

(3) in subsection (c)(2), by striking ''parent'' and inserting ''graduate or professional student or parent''; and

(4) in subsection (d)(1), by striking ''the parent'' and inserting ''the graduate or professional student or the parent''.

(d) UNSUBSIDIZED STAFFORD LOANS FOR GRADUATE OR PROFESSIONAL STUDENTS.—Section 428H(d)(2) (20 U.S.C. 1078–8(d)(2)) is amended—

(1) in subparagraph (C), by striking ''$10,000'' and inserting ''$12,000''; and

(2) in subparagraph (D)—

(A) in clause (i), by striking ''$5,000'' and inserting ''$7,000''; and

(B) in clause (ii), by striking ''$5,000'' and inserting ''$7,000''.

(e) EFFECTIVE DATE OF INCREASES.—The amendments made by subsections subsections (a), (b), and (d) shall be effective July 1, 2007.

**SEC. 8006. PLUS LOAN INTEREST RATES AND ZERO SPECIAL ALLOWANCE PAYMENT.**

(a) PLUS LOANS.—Section 427A(l)(2) (20 U.S.C. 1077a(l)(2)) is amended by striking ''7.9 percent'' and inserting ''8.5 percent''.

(b) CONFORMING AMENDMENTS FOR SPECIAL ALLOWANCES.—

(1) AMENDMENTS.—Subparagraph (I) of section 438(b)(2) (20 U.S.C. 1087–1(b)(2)) is amended—

(A) in clause (iii), by striking '', subject to clause (v) of this subparagraph'';

(B) in clause (iv), by striking '', subject to clause (vi) of this subparagraph''; and

(C) by striking clauses (v), (vi), and (vii) and inserting the following:

''(v) RECAPTURE OF EXCESS INTEREST.—

''(I) EXCESS CREDITED.—With respect to a loan on which the applicable interest rate is determined under subsection (k) or (l) of section 427A and for which the first disbursement of principal is made on or after April 1, 2006, if the applicable interest rate for any 3-month period exceeds the special allowance support level applicable to such loan under this subparagraph for such period, then an adjustment shall be made by calculating the excess interest in the amount computed under subclause (II) of this clause, and by crediting the excess interest to the Government not less often than annually.

''(II) CALCULATION OF EXCESS.—The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

''(aa) the applicable interest rate minus the special allowance support level determined under this subparagraph; multiplied by

''(bb) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

''(cc) four.

''(III) SPECIAL ALLOWANCE SUPPORT LEVEL.—For purposes of this clause, the term 'special allowance support level' means, for any loan, a number expressed as a percentage equal to the sum of the rates determined under subclauses (I) and (III) of clause (i), and applying any substitution rules applicable to such loan under clauses (ii), (iii), and (iv) in determining such sum.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall not apply with

respect to any special allowance payment made under section 438 of the Higher Education Act of 1965 (20 U.S.C 1087–1) before April 1, 2006.

**SEC. 8007. DEFERMENT OF STUDENT LOANS FOR MILITARY SERVICE.**

(a) FEDERAL FAMILY EDUCATION LOANS.—Section 428(b)(1)(M) (20 U.S.C. 1078(b)(1)(M)) is amended—

(1) by striking ''or'' at the end of clause (ii);

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following new clause:

''(iii) not in excess of 3 years during which the borrower—

''(I) is serving on active duty during a war or other military operation or national emergency; or

''(II) is performing qualifying National Guard duty during a war or other military operation or national emergency; or''.

(b) DIRECT LOANS.—Section 455(f)(2) (20 U.S.C. 1087e(f)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph:

''(C) not in excess of 3 years during which the borrower—

''(i) is serving on active duty during a war or other military operation or national emergency; or

''(ii) is performing qualifying National Guard duty during a war or other military operation or national emergency; or''.

(c) PERKINS LOANS.—Section 464(c)(2)(A) (20 U.S.C. 1087dd(c)(2)(A)) is amended—

(1) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(2) by inserting after clause (ii) the following new clause:

''(iii) not in excess of 3 years during which the borrower—

''(I) is serving on active duty during a war or other military operation or national emergency; or

''(II) is performing qualifying National Guard duty during a war or other military operation or national emergency;''.

(d) DEFINITIONS.—Section 481 (20 U.S.C. 1088) is amended by adding at the end the following new subsection:

''(d) DEFINITIONS FOR MILITARY DEFERMENTS.—For purposes of parts B, D, and E of this title:

''(1) ACTIVE DUTY.—The term 'active duty' has the meaning given such term in section 101(d)(1) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

''(2) MILITARY OPERATION.—The term 'military operation' means a contingency operation as such term is defined in section 101(a)(13) of title 10, United States Code.

''(3) NATIONAL EMERGENCY.—The term 'national emergency' means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

''(4) SERVING ON ACTIVE DUTY.—The term 'serving on active duty during a war or other military operation or national emergency' means service by an individual who is—

''(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10, United States Code, or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

''(B) any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

''(5) QUALIFYING NATIONAL GUARD DUTY.—The term 'qualifying National Guard duty during a war or other military operation or national emergency' means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, in connection with a war, other military operation, or a national emergency declared by the President and supported by Federal funds.''.

(e) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed to authorize any refunding of any repayment of a loan.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to loans for which the first disbursement is made on or after July 1, 2001.

**SEC. 8008. ADDITIONAL LOAN TERMS AND CONDITIONS.**

(a) DISBURSEMENT.—Section 428(b)(1)(N) (20 U.S.C. 1078(b)(1)(N)) is amended—

(1) by striking ''or'' at the end of clause (i); and

(2) by striking clause (ii) and inserting the following:

''(ii) in the case of a student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled, and only after verification of the student's enrollment by the lender or guaranty agency, are, at the request of the student, disbursed directly to the student by the means described in clause (i), unless such student requests that the check be endorsed, or the funds transfer be authorized, pursuant to an authorized power-of-attorney; or

''(iii) in the case of a student who is studying outside the United States in a program of study at an eligible foreign institution, are, at the request of the foreign institution, disbursed directly to the student, only after verification of the student's enrollment by the lender or guaranty agency by the means described in clause (i).''.

(b) REPAYMENT PLANS: DIRECT LOANS.—Section 455(d)(1) (20 U.S.C. 1087e(d)(1)) is amended by striking subparagraphs (A), (B), and (C) and inserting the following:

''(A) a standard repayment plan, consistent with subsection (a)(1) of this section and with section 428(b)(9)(A)(i);

''(B) a graduated repayment plan, consistent with section 428(b)(9)(A)(ii);

''(C) an extended repayment plan, consistent with section 428(b)(9)(A)(v), except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L); and''.

(c) ORIGINATION FEES.—

(1) FFEL PROGRAM.—Paragraph (2) of section 438(c) (20 U.S.C. 1087–1(c)) is amended—

(A) by striking the designation and heading of such paragraph and inserting the following:

''(2) AMOUNT OF ORIGINATION FEES.—

''(A) IN GENERAL.—''; and

(B) by adding at the end the following new subparagraph:

''(B) SUBSEQUENT REDUCTIONS.—Subparagraph (A) shall be applied to loans made under this part (other than loans made under sections 428C and 439(o))—

''(i) by substituting '2.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2007;

''(ii) by substituting '1.5 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

''(iii) by substituting '1.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

''(iv) by substituting '0.5 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

''(v) by substituting '0.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.''.

(2) DIRECT LOAN PROGRAM.—Subsection (c) of section 455 (20 U.S.C. 1087e(c)) is amended—

(A) by striking ''(c) LOAN FEE.—'' and inserting the following:

''(c) LOAN FEE.—

''(1) IN GENERAL.—''; and

(B) by adding at the end the following:

''(2) SUBSEQUENT REDUCTION.—Paragraph (1) shall be applied to loans made under this part, other than Federal Direct Consolidation loans and Federal Direct PLUS loans—

''(A) by substituting '3.0 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after the date of enactment of the Higher Education Reconciliation Act of 2005, and before July 1, 2007;

''(B) by substituting '2.5 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

''(C) by substituting '2.0 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

''(D) by substituting '1.5 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

''(E) by substituting '1.0 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.''.

(3) CONFORMING AMENDMENT.—Section 455(b)(8)(A) (20 U.S.C. 1087e(b)(8)(A)) is amended by inserting ''or origination fee'' after ''reductions in the interest rate''.

**SEC. 8009. CONSOLIDATION LOAN CHANGES.**

(a) CONSOLIDATION BETWEEN PROGRAMS.—Section 428C (20 U.S.C. 1078–3) is amended—

(1) in subsection (a)(3)(B)(i)—

(A) by inserting ''or under section 455(g)'' after ''under this section'' both places it appears;

(B) by inserting ''under both sections'' after ''terminates''

(C) by striking ''and'' at the end of subclause (III);

(D) by striking the period at the end of subclause (IV) and inserting ''; and''; and

(E) by adding at the end the following new subclause:

''(V) an individual may obtain a subsequent consolidation loan under section 455(g) only for the purposes of obtaining an income contingent repayment plan, and only if the loan has been submitted to the guaranty agency for default aversion.''; and

(2) in subsection (b)(5), by striking the first sentence and inserting the following: ''In the event that a lender with an agreement under subsection (a)(1) of this section denies a consolidation loan application submitted to the lender by an eligible borrower under this section, or denies an application submitted to the lender by such a borrower for a consolidation loan with income-sensitive repayment terms, the Secretary shall offer any

such borrower who applies for it, a Federal Direct Consolidation loan. The Secretary shall offer such a loan to a borrower who has defaulted, for the purpose of resolving the default.''.

(b) REPEAL OF IN-SCHOOL CONSOLIDATION.—

(1) DEFINITION OF REPAYMENT PERIOD.—Section 428(b)(7)(A) (20 U.S.C. 1078(b)(7)(A)) is amended by striking ''shall begin—'' and all that follows through ''earlier date.'' and inserting the following: ''shall begin the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).''.

(2) CONFORMING CHANGE TO ELIGIBLE BORROWER DEFINITION.—Section 428C(a)(3)(A)(ii)(I) (20 U.S.C. 1078–3(a)(3)(A)(ii)(I)) is amended by inserting ''as determined under section 428(b)(7)(A)'' after ''repayment status''.

(c) ADDITIONAL AMENDMENTS.—Section 428C (20 U.S.C. 1078–3) is amended in subsection (a)(3), by striking subparagraph (C).

(d) CONFORMING AMENDMENTS TO DIRECT LOAN PROGRAM.—Section 455 (20 U.S.C. 1087e) is amended

(1) in subsection (a)(1) by inserting ''428C,'' after ''428B,'';

(2) in subsection (a)(2)—

(A) by striking ''and'' at the end of subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following:

''(C) section 428C shall be known as 'Federal Direct Consolidation Loans'; and ''; and

(3) in subsection (g)—

(A) by striking the second sentence; and

(B) by adding at the end the following new sentences: ''To be eligible for a consolidation loan under this part, a borrower shall meet the eligibility criteria set forth in section 428C(a)(3). The Secretary, upon application for such a loan, shall comply with the requirements applicable to a lender under section 428C(b)(1)(F).''.

**SEC. 8010. REQUIREMENTS FOR DISBURSEMENTS OF STUDENT LOANS.**

Section 428G (20 U.S.C. 1078–7) is amended—

(1) in subsection (a)(3), by adding at the end the following: ''Notwithstanding section 422(d) of the Higher Education Amendments of 1998, this paragraph shall be effective beginning on the date of enactment of the Higher Education Reconciliation Act of 2005.'';

(2) in subsection (b)(1), by adding at the end the following: ''Notwithstanding section 422(d) of the Higher Education Amendments of 1998, the second sentence of this paragraph shall be effective beginning on the date of enactment of the Higher Education Reconciliation Act of 2005.''; and

(3) in subsection (e), by striking '', made to a student to cover the cost of attendance at an eligible institution outside the United States''.

**SEC. 8012. SCHOOL AS LENDER.**

Paragraph (2) of section 435(d) (20 U.S.C. 1085(d)(2)) is amended to read as follows:

''(2) REQUIREMENTS FOR ELIGIBLE INSTITUTIONS.—

''(A) IN GENERAL.—To be an eligible lender under this part, an eligible institution—

''(i) shall employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending such institution;

''(ii) shall not be a home study school;

''(iii) shall not—

''(I) make a loan to any undergraduate student;

''(II) make a loan other than a loan under section 428 or 428H to a graduate or professional student; or

''(III) make a loan to a borrower who is not enrolled at that institution;

''(iv) shall award any contract for financing, servicing, or administration of loans under this title on a competitive basis;

''(v) shall offer loans that carry an origination fee or an interest rate, or both, that are less than such fee or rate authorized under the provisions of this title;

''(vi) shall not have a cohort default rate (as defined in section 435(m)) greater than 10 percent;

''(vii) shall, for any year for which the institution engages in activities as an eligible lender, provide for a compliance audit conducted in accordance with section 428(b)(1)(U)(iii)(I), and the regulations thereunder, and submit the results of such audit to the Secretary;

''(viii) shall use any proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the Department of Education, and any proceeds from the sale or other disposition of loans, for need-based grant programs; and

''(ix) shall have met the requirements of subparagraphs (A) through (F) of this paragraph as in effect on the day before the date of enactment of the Higher Education Reconciliation Act of 2005, and made loans under this part, on or before April 1, 2006.

''(B) ADMINISTRATIVE EXPENSES.—An eligible lender under subparagraph (A) shall be permitted to use a portion of the proceeds described in subparagraph (A)(viii) for reasonable and direct administrative expenses.

''(C) SUPPLEMENT, NOT SUPPLANT.—An eligible lender under subparagraph (A) shall ensure that the proceeds described in subparagraph (A)(viii) are used to supplement, and not to supplant, non-Federal funds that would otherwise be used for need-based grant programs.''.

**SEC. 8013. REPAYMENT BY THE SECRETARY OF LOANS OF BANKRUPT, DECEASED, OR DISABLED BORROWERS; TREATMENT OF BORROWERS ATTENDING SCHOOLS THAT FAIL TO PROVIDE A REFUND, ATTENDING CLOSED SCHOOLS, OR FALSELY CERTIFIED AS ELIGIBLE TO BORROW.**

Section 437 (20 U.S.C. 1087) is amended—

(1) in the section heading, by striking ''**CLOSED SCHOOLS OR FALSELY CERTIFIED AS ELIGIBLE TO BORROW**'' and inserting ''**SCHOOLS THAT FAIL TO PROVIDE A REFUND, ATTENDING CLOSED SCHOOLS, OR FALSELY CERTIFIED AS ELIGIBLE TO BORROW**''; and

(2) in the first sentence of subsection (c)(1), by inserting ''or was falsely certified as a result of a crime of identity theft'' after ''falsely certified by the eligible institution''.

**SEC. 8014. ELIMINATION OF TERMINATION DATES FROM TAXPAYER-TEACHER PROTECTION ACT OF 2004.**

(a) EXTENSION OF LIMITATIONS ON SPECIAL ALLOWANCE FOR LOANS FROM THE PROCEEDS OF TAX EXEMPT ISSUES.—Section 438(b)(2)(B) (20 U.S.C. 1087–1(b)(2)(B)) is amended—

(1) in clause (iv), by striking ''and before January 1, 2006,''; and

(2) in clause (v)(II)—

(A) by striking ''and before January 1, 2006,'' each place it appears in divisions (aa) and (bb); and

(B) by striking '', and before January 1, 2006'' in division (cc).

(b) ADDITIONAL LIMITATION ON SPECIAL ALLOWANCE FOR LOANS FROM THE PROCEEDS OF TAX EXEMPT ISSUES.—Section 438(b)(2)(B) (20 U.S.C 1087–1(b)(2)(B)) is further amended by adding at the end thereof the following new clauses:

''(vi) Notwithstanding clauses (i), (ii), and (v), but subject to clause (vii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, as the case may be, for a holder of loans—

''(I) that were made or purchased on or after the date of enactment of the Higher Education Reconciliation Act of 2005; or

''(II) that were not earning a quarterly rate of special allowance determined under clauses (i) or (ii) of subparagraph (B) of this paragraph (20 U.S.C. 1087–1(b)(2)(b)) as of the date of enactment of the Higher Education Reconciliation Act of 2005.

''(vii) Clause (vi) shall be applied by substituting 'December 31, 2010' for 'the date of enactment of the Higher Education Reconciliation Act of 2005' in the case of a holder of loans that—

''(I) was, as of the date of enactment of the Higher Education Reconciliation Act of 2005, and during the quarter for which the special allowance is paid, a unit of State or local government or a nonprofit private entity;

''(II) was, as of such date of enactment, and during such quarter, not owned or controlled by, or under common ownership or control with, a for-profit entity; and

''(III) held, directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than $100,000,000 on loans for which special allowances were paid under this subparagraph in the most recent quarterly payment prior to September 30, 2005.''.

(c) ELIMINATION OF EFFECTIVE DATE LIMITATION ON HIGHER TEACHER LOAN FORGIVENESS BENEFITS.—

(1) TECHNICAL CLARIFICATION.—The matter preceding paragraph (1) of section 2 of the Taxpayer-Teacher Protection Act of 2004 (Public Law 108–409; 118 Stat. 2299) is amended by inserting ''of the Higher Education Act of 1965'' after ''Section 438(b)(2)(B)''.

(2) AMENDMENT.—Paragraph (3) of section 3(b) of the Taxpayer-Teacher Protection Act of 2004 (20 U.S.C. 1078–10 note) is amended by striking '', and before October 1, 2005''.

(3) EFFECTIVE DATES.—The amendment made by paragraph (1) shall be effective as if enacted on October 30, 2004, and the amendment made by paragraph (2) shall be effective as if enacted on October 1, 2005.

(d) COORDINATION WITH SECOND HIGHER EDUCATION EXTENSION ACT OF 2005.—

(1) REPEAL.—Section 2 of the Second Higher Education Extension Act of 2005 is amended by striking subsections (b) and (c).

(2) EFFECT ON AMENDMENTS.—The amendments made by subsections (a) and (c) of this section shall be effective as if the amendments made subsections (b) and (c) of section 2 of the Second Higher Education Extension Act of 2005 had not been enacted.

(e) ADDITIONAL CHANGES TO TEACHER LOAN FORGIVENESS PROVISIONS.—

(1) FFEL PROVISIONS.—Section 428J (20 U.S.C. 1078–10) is amended—

(A) in subsection (b)(1)(B), by inserting after ''1965'' the following: '', or meets the requirements of subsection (g)(3)''; and

(B) in subsection (g), by adding at the end the following new paragraph:

''(3) PRIVATE SCHOOL TEACHERS.—An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (b)(1)(B), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher shall be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and

Secondary Education Act of 1965, and the score achieved by such teacher on each test shall equal or exceed the average passing score of those 5 States.''.

(2) DIRECT LOAN PROVISIONS.—Section 460 (20 U.S.C. 1087j) is amended—

(A) in subsection (b)(1)(A)(ii), by inserting after ''1965'' the following: '', or meets the requirements of subsection (g)(3)''; and

(B) in subsection (g), by adding at the end the following new paragraph:

''(3) PRIVATE SCHOOL TEACHERS.—An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (b)(1)(A)(ii), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher shall be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965, and the score achieved by such teacher on each test shall equal or exceed the average passing score of those 5 States.''.

**SEC. 8015. ADDITIONAL ADMINISTRATIVE PROVISIONS.**

(a) INSURANCE PERCENTAGE.—

(1) AMENDMENT.—Subparagraph (G) of section 428(b)(1) (20 U.S.C. 1078(b)(1)(G)) is amended to read as follows:

''(G) insures 98 percent of the unpaid principal of loans insured under the program, except that—

''(i) such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to section 428(j) or 439(q);

''(ii) for any loan for which the first disbursement of principal is made on or after July 1, 2006, the preceding provisions of this subparagraph shall be applied by substituting '97 percent' for '98 percent'; and

''(iii) notwithstanding the preceding provisions of this subparagraph, such program shall insure 100 percent of the unpaid principal amount of exempt claims as defined in subsection (c)(1)(G);''.

(2) EFFECTIVE DATE OF AMENDMENT.—The amendment made by this subsection shall apply with respect to loans for which the first disbursement of principal is made on or after July 1, 2006.

(b) FEDERAL DEFAULT FEES.—

(1) IN GENERAL.—Subparagraph (H) of section 428(b)(1) (20 U.S.C. 1078(b)(1)(H)) is amended to read as follows:

''(H) provides—

''(i) for loans for which the date of guarantee of principal is before July, 1, 2006, for the collection of a single insurance premium equal to not more than 1.0 percent of the principal amount of the loan, by deduction proportionately from each installment payment of the proceeds of the loan to the borrower, and ensures that the proceeds of the premium will not be used for incentive payments to lenders; or

''(ii) for loans for which the date of guarantee of principal is on or after July 1, 2006, for the collection, and the deposit into the Federal Student Loan Reserve Fund under section 422A of a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources, and ensures that the proceeds of the Federal default fee will not be used for incentive payments to lenders;''.

(2) UNSUBSIDIZED LOANS.—Section 428H(h) (20 U.S.C. 1078–8(h)) is amended by adding at the end the following new sentences: ''Effective for loans for which the date of guarantee of principal is on or after July 1, 2006, in lieu of the insurance premium authorized under the preceding sentence, each State or nonprofit private institution or organization having an agreement with the Secretary under section 428(b)(1) shall collect and deposit into the Federal Student Loan Reserve Fund under section 422A, a Federal default fee of an amount equal to 1.0 percent of the principal amount of the loan, which fee shall be collected either by deduction from the proceeds of the loan or by payment from other non-Federal sources. The Federal default fee shall not be used for incentive payments to lenders.''.

(3) VOLUNTARY FLEXIBLE AGREEMENTS.—Section 428A(a)(1) (20 U.S.C. 1078–1(a)(1)) is amended—

(A) by striking ''or'' at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(C) by adding at the end the following new subparagraph:

''(C) the Federal default fee required by section 428(b)(1)(H) and the second sentence of section 428H(h).''.

(c) TREATMENT OF EXEMPT CLAIMS.—

(1) AMENDMENT.—Section 428(c)(1) (20 U.S.C. 1078(c)(1)) is amended—

(A) by redesignating subparagraph (G) as subparagraph (H), and moving such subparagraph 2 em spaces to the left; and

(B) by inserting after subparagraph (F) the following new subparagraph:

''(G)(i) Notwithstanding any other provisions of this section, in the case of exempt claims, the Secretary shall apply the provisions of—

''(I) the fourth sentence of subparagraph (A) by substituting '100 percent' for '95 percent';

''(II) subparagraph (B)(i) by substituting '100 percent' for '85 percent'; and

''(III) subparagraph (B)(ii) by substituting '100 percent' for '75 percent'.

''(ii) For purposes of clause (i) of this subparagraph, the term 'exempt claims' means claims with respect to loans for which it is determined that the borrower (or the student on whose behalf a parent has borrowed), without the lender's or the institution's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the borrower or the student to be ineligible for all or a portion of the loan or for interest benefits thereon.''.

(2) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this subsection shall apply with respect to loans for which the first disbursement of principal is made on or after July 1, 2006.

(d) CONSOLIDATION OF DEFAULTED LOANS.—Section 428(c) (20 U.S.C. 1078(c)) is further amended—

(1) in paragraph (2)(A)—

(A) by inserting ''(i)'' after ''including''; and

(B) by inserting before the semicolon at the end the following: ''and (ii) requirements establishing procedures to preclude consolidation lending from being an excessive proportion of guaranty agency recoveries on defaulted loans under this part'';

(2) in paragraph (2)(D), by striking ''paragraph (6)'' and inserting ''paragraph (6)(A)''; and

(3) in paragraph (6)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting ''(A)'' before ''For the purpose of paragraph (2)(D),''; and

(C) by adding at the end the following new subparagraphs:

''(B) A guaranty agency shall—

''(i) on or after October 1, 2006—

''(I) not charge the borrower collection costs in an amount in excess of 18.5 percent of the outstanding principal and interest of a defaulted loan that is paid off through consolidation by the borrower under this title; and

''(II) remit to the Secretary a portion of the collection charge under subclause (I) equal to 8.5 percent of the outstanding principal and interest of such defaulted loan; and

''(ii) on and after October 1, 2009, remit to the Secretary the entire amount charged under clause (i)(I) with respect to each defaulted loan that is paid off with excess consolidation proceeds.

''(C) For purposes of subparagraph (B), the term 'excess consolidation proceeds' means, with respect to any guaranty agency for any Federal fiscal year beginning on or after October 1, 2009, the proceeds of consolidation of defaulted loans under this title that exceed 45 percent of the agency's total collections on defaulted loans in such Federal fiscal year.''.

(e) DOCUMENTATION OF FORBEARANCE AGREEMENTS.—Section 428(c) (20 U.S.C. 1078(c)) is further amended—

(1) in paragraph (3)(A)(i)—

(A) by striking ''in writing''; and

(B) by inserting ''and documented in accordance with paragraph (10)'' after ''approval of the insurer''; and

(2) by adding at the end the following new paragraph:

''(10) DOCUMENTATION OF FORBEARANCE AGREEMENTS.—For the purposes of paragraph (3), the terms of forbearance agreed to by the parties shall be documented by confirming the agreement of the borrower by notice to the borrower from the lender, and by recording the terms in the borrower's file.''.

(f) VOLUNTARY FLEXIBLE AGREEMENTS.—Section 428A(a) (20 U.S.C. 1078–1(a)) is further amended—

(1) in paragraph (1)(B), by striking ''unless the Secretary'' and all that follows through ''designated guarantor'';

(2) by striking paragraph (2);

(3) by redesignating paragraph (3) as paragraph (2); and

(4) by striking paragraph (4).

(g) FRAUD: REPAYMENT REQUIRED.—Section 428B(a)(1) (20 U.S.C. 1078–2(a)(1)) is further amended—

(1) by striking ''and'' at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph:

''(B) in the case of a graduate or professional student or parent who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, such graduate or professional student or parent has completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud; and''.

(h) DEFAULT REDUCTION PROGRAM.—Section 428F(a)(1) (20 U.S.C. 1078–6(a)(1)) is amended—

(1) in subparagraph (A), by striking ''consecutive payments for 12 months'' and inserting ''9 payments made within 20 days of the due date during 10 consecutive months'';

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

''(C) A guaranty agency may charge the borrower and retain collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest at the time of sale of a loan rehabilitated under subparagraph (A).''.

(j) EXCEPTIONAL PERFORMANCE INSURANCE RATE.—Section 428I(b)(1) (20 U.S.C. 1078–9(b)(1)) is amended—

(1) in the heading, by striking ''100 PERCENT'' and inserting ''99 PERCENT''; and

(2) by striking ''100 percent of the unpaid'' and inserting ''99 percent of the unpaid''.

(k) UNIFORM ADMINISTRATIVE AND CLAIMS PROCEDURE.—Section 432(l)(1)(H) (20 U.S.C. 1082(l)(1)(H)) is amended by inserting ''and anticipated graduation date'' after ''status change''.

(2) Section 428(a)(3)(A)(v) (20 U.S.C. 1078(a)(3)(A)(v)) is amended—

(A) by striking ''or'' at the end of subclause (I);

(B) by striking the period at the end of subclause (II) and inserting ''; or''; and

(C) by adding after subclause (II) the following new subclause:

''(III) in the case of a loan disbursed through an escrow agent, 3 days before the first disbursement of the loan.''.

(3) Section 428(c)(1)(A) (20 U.S.C. 1078(c)(1)(A)) is amended by striking ''45 days'' in the last sentence and inserting ''30 days''.

(4) Section 428(i)(1) (20 U.S.C. 1078(i)(1)) is amended by striking ''21 days'' in the third sentence and inserting ''10 days''.

**SEC. 8016. FUNDS FOR ADMINISTRATIVE EXPENSES.**

Section 458 is amended to read as follows:

**''SEC. 458. FUNDS FOR ADMINISTRATIVE EXPENSES.**

''(a) ADMINISTRATIVE EXPENSES.—

''(1) MANDATORY FUNDS FOR FISCAL YEAR 2006.—For fiscal year 2006, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for—

''(A) administrative costs under this part and part B, including the costs of the direct student loan programs under this part; and

''(B) account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsections (b) and (c),

not to exceed (from such funds not otherwise appropriated) $820,000,000 in fiscal year 2006.

''(2) AUTHORIZATION FOR ADMINISTRATIVE COSTS BEGINNING IN FISCAL YEARS 2007 THROUGH 2011.—For each of the fiscal years 2007 through 2011, there are authorized to be appropriated such sums as may be necessary for administrative costs under this part and part B, including the costs of the direct student loan programs under this part.

''(3) CONTINUING MANDATORY FUNDS FOR ACCOUNT MAINTENANCE FEES.—For each of the fiscal years 2007 through 2011, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsection (b).

''(4) ACCOUNT MAINENANCE FEES.—Account maintenance fees under paragraph (3) shall be paid quarterly and deposited in the Agency Operating Fund established under section 422B.

''(5) CARRYOVER.—The Secretary may carry over funds made available under this section to a subsequent fiscal year.

''(b) CALCULATION BASIS.—Account maintenance fees payable to guaranty agencies under subsection (a)(3) shall not exceed the basis of 0.10 percent of the original principal amount of outstanding loans on which insurance was issued under part B.

''(c) BUDGET JUSTIFICATION.—No funds may be expended under this section unless the Secretary includes in the Department of Education's annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year, and the projection of activities and costs for each remaining year for which administrative expenses under this section are made available.''.

**SEC. 8017. COST OF ATTENDANCE.**

Section 472 (20 U.S.C. 1087ll) is amended—

(1) by striking paragraph (4) and inserting the following:

''(4) for less than half-time students (as determined by the institution), tuition and fees and an allowance for only—

''(A) books, supplies, and transportation (as determined by the institution);

''(B) dependent care expenses (determined in accordance with paragraph (8)); and

''(C) room and board costs (determined in accordance with paragraph (3)), except that a student may receive an allowance for such costs under this subparagraph for not more than 3 semesters or the equivalent, of which not more than 2 semesters or the equivalent may be consecutive;'';

(2) in paragraph (11), by striking ''and'' after the semicolon;

(3) in paragraph (12), by striking the period and inserting ''; and''; and

(4) by adding at the end the following:

''(13) at the option of the institution, for a student in a program requiring professional licensure or certification, the one time cost of obtaining the first professional credentials (as determined by the institution).''.

**SEC. 8018. FAMILY CONTRIBUTION.**

(a) FAMILY CONTRIBUTION FOR DEPENDENT STUDENTS.—

(1) AMENDMENTS.—Section 475 (20 U.S.C. 1087oo) is amended—

(A) in subsection (g)(2)(D), by striking ''$2,200'' and inserting ''$3,000''; and

(B) in subsection (h), by striking ''35'' and inserting ''20''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007.

(b) FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE.—

(1) AMENDMENTS.—Section 476 (20 U.S.C.1087pp) is amended—

(A) in subsection (b)(1)(A)(iv)—

(i) in subclause (I), by striking ''$5,000'' and inserting ''$6,050'';

(ii) in subclause (II), by striking ''$5,000'' and inserting ''$6,050''; and

(iii) in subclause (III), by striking ''$8,000'' and inserting ''$9,700''; and

(B) in subsection (c)(4), by striking ''35'' and inserting ''20''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007.

(c) FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE.—

(1) AMENDMENT.—Section 477(c)(4) (20 U.S.C. 1087qq(c)(4)) is amended by striking ''12'' and inserting ''7''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2007.

(d) REGULATIONS; UPDATED TABLES.—Section 478(b) (20 U.S.C. 1087rr(b)) is amended—

(1) in paragraph (1), by adding at the end the following: ''For the 2007–2008 academic year, the Secretary shall revise the tables in accordance with this paragraph, except that the Secretary shall increase the amounts contained in the table in section 477(b)(4) by a percentage equal to the greater of the estimated percentage increase in the Consumer Price Index (as determined under the preceding sentence) or 5 percent.''; and

(2) in paragraph (2)—

(A) by striking ''2000–2001'' and inserting ''2007–2008''; and

(B) by striking ''1999'' and inserting ''2006''.

(e) EMPLOYMENT EXPENSE ALLOWANCE.—Section 478(h) (20 U.S.C. 1087rr(h)) is amended—

(1) by striking ''476(b)(4)(B),''; and

(2) by striking ''meals away from home, apparel and upkeep, transportation, and housekeeping services'' and inserting ''food away from home, apparel, transportation, and household furnishings and operations''.

**SEC. 8019. SIMPLIFIED NEED TEST AND AUTOMATIC ZERO IMPROVEMENTS.**

(a) AMENDMENTS.—Section 479 (20 U.S.C. 1087ss) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking clause (i) and inserting the following:

''(i) the student's parents—

''(I) file, or are eligible to file, a form described in paragraph (3);

''(II) certify that the parents are not required to file a Federal income tax return; or

''(III) received, or the student received, benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and''; and

(ii) in subparagraph (B), by striking clause (i) and inserting the following:

''(i) the student (and the student's spouse, if any)—

''(I) files, or is eligible to file, a form described in paragraph (3);

''(II) certifies that the student (and the student's spouse, if any) is not required to file a Federal income tax return; or

''(III) received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and''; and

(B) in the matter preceding subparagraph (A) of paragraph (3), by striking ''A student or family files a form described in this subsection, or subsection (c), as the case maybe, if the student or family, respectively, files'' and inserting ''In the case of an independent student, the student, or in the case of a dependent student, the family, files a form described in this subsection, or subsection (c), as the case may be, if the student or family, as appropriate, files'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking subparagraph (A) and inserting the following:

''(A) the student's parents—

''(i) file, or are eligible to file, a form described in subsection (b)(3);

''(ii) certify that the parents are not required to file a Federal income tax return; or

''(iii) received, or the student received, benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and''; and

(ii) by striking subparagraph (B) and inserting the following:

''(B) the sum of the adjusted gross income of the parents is less than or equal to $20,000; or''; and

(B) in paragraph (2)—

(i) by striking subparagraph (A) and inserting the following:

''(A) the student (and the student's spouse, if any)—

''(i) files, or is eligible to file, a form described in subsection (b)(3);

''(ii) certifies that the student (and the student's spouse, if any) is not required to file a Federal income tax return; or

''(iii) received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and''; and

(ii) by striking subparagraph (B) and inserting the following:

''(B) the sum of the adjusted gross income of the student and spouse (if appropriate) is less than or equal to $20,000.''; and

(3) by adding at the end the following:

''(d) DEFINITION OF MEANS-TESTED FEDERAL BENEFIT PROGRAM.—In this section, the term 'means-tested Federal benefit program' means a mandatory spending program of the Federal Government, other than a program under this title, in which eligibility for the program's benefits, or the amount of such benefits, are determined on the basis of income or resources of the individual or family seeking the benefit, and may include such programs as—

''(1) the supplemental security income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.);

''(2) the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

''(3) the free and reduced price school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

''(4) the program of block grants for States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

''(5) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); and

''(6) other programs identified by the Secretary.''.

(b) EVALUATION OF SIMPLIFIED NEEDS TEST.—

(1) ELIGIBILITY GUIDELINES.—The Secretary of Education shall regularly evaluate the impact of the eligibility guidelines in subsections (b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A), and (c)(2)(A) of section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss(b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A), and (c)(2)(A)).

(2) MEANS-TESTED FEDERAL BENEFIT PROGRAM.—For each 3-year period, the Secretary of Education shall evaluate the impact of including the receipt of benefits by a student or parent under a means-tested Federal benefit program (as defined in section 479(d) of the Higher Education Act of 1965 (20 U.S.C. 1087ss(d)) as a factor in determining eligibility under subsections (b) and (c) of section 479 of the Higher Education Act of 1965 (20 U.S.C. 1087ss(b) and (c)).

**SEC. 8020. ADDITIONAL NEED ANALYSIS AMENDMENTS.**

(b) TREATING ACTIVE DUTY MEMBERS OF THE ARMED FORCES AS INDEPENDENT STUDENTS.—Section 480(d)(3) (20 U.S.C. 1087vv(d)(3)) is amended by inserting before the semicolon at the end the following: ''or is currently serving on active duty in the Armed Forces for other than training purposes''.

(c) DEFINITION OF ASSETS.—Section 480(f)(1) (20 U.S.C. 1087vv(f)(1)) is amended by inserting ''qualified education benefits (except as provided in paragraph (3)),'' after ''tax shelters,''.

(d) TREATMENT OF FAMILY OWNERSHIP OF SMALL BUSINESSES.—Section 480(f)(2) (20 U.S.C. 1087vv(f)(2)) is amended—

(1) in subparagraph (A), by striking ''or'';

(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following new subparagraph:

''(C) a small business with not more than 100 full-time or full-time equivalent employees (or any part of such a small business) that is owned and controlled by the family.''.

(e) ADDITIONAL DEFINITIONS.—Section 480(f) is further amended by adding at the end the following new paragraphs:

''(3) A qualified education benefit shall not be considered an asset of a student for purposes of section 475.

''(4) In determining the value of assets in a determination of need under this title (other than for subpart 4 of part A), the value of a qualified education benefit shall be—

''(A) the refund value of any tuition credits or certificates purchased under a qualified education benefit; and

''(B) in the case of a program in which contributions are made to an account that is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, the current balance of such account.

''(5) In this subsection:

''(A) The term 'qualified education benefit' means—

''(i) a qualified tuition program (as defined in section 529(b)(1)(A) of the Internal Revenue Code of 1986) or other prepaid tuition plan offered by a State; and

''(ii) a Coverdell education savings account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986).

''(B) The term 'qualified higher education expenses' has the meaning given the term in section 529(e) of the Internal Revenue Code of 1986.''.

(f) DESIGNATED ASSISTANCE.—Section 480(j) (20 U.S.C. 1087vv(j)) is amended—

(1) in the subsection heading, by striking ''; TUITION PREPAYMENT PLANS'';

(2) by striking paragraph (2);

(3) by redesignating paragraph (3) as paragraph (2); and

(4) by adding at the end the following new paragraph:

''(3) Notwithstanding paragraph (1) and section 472, assistance not received under this title may be excluded from both estimated financial assistance and cost of attendance, if that assistance is provided by a State and is designated by such State to offset a specific component of the cost of attendance. If that assistance is excluded from either estimated financial assistance or cost of attendance, it shall be excluded from both.''.

**SEC. 8021. GENERAL PROVISIONS.**

(a) ACADEMIC YEAR.—Paragraph (2) of section 481(a) (20 U.S.C. 1088(a)) is amended to read as follows:

''(2)(A) For the purpose of any program under this title, the term 'academic year' shall—

''(i) require a minimum of 30 weeks of instructional time for a course of study that measures its program length in credit hours; or

''(ii) require a minimum of 26 weeks of instructional time for a course of study that measures its program length in clock hours; and

''(iii) require an undergraduate course of study to contain an amount of instructional time whereby a full-time student is expected to complete at least—

''(I) 24 semester or trimester hours or 36 quarter credit hours in a course of study that measures its program length in credit hours; or

''(II) 900 clock hours in a course of study that measures its program length in clock hours.

''(B) The Secretary may reduce such minimum of 30 weeks to not less than 26 weeks for good cause, as determined by the Secretary on a case-by-case basis, in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree.''.

(b) DISTANCE EDUCATION: ELIGIBLE PROGRAM.—Section 481(b) (20 U.S.C. 1088(b)) is amended by adding at the end the following new paragraphs:

''(3) An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for the purposes of this title if the program is offered by an institution, other than a foreign institution, that has been evaluated and determined (before or after the date of enactment of the Higher Education Reconciliation Act of 2005) to have the capability to effectively deliver distance education programs by an accrediting agency or association that—

''(A) is recognized by the Secretary under subpart 2 of part H; and

''(B) has evaluation of distance education programs within the scope of its recognition, as described in section 496(n)(3).

''(4) For purposes of this title, the term 'eligible program' includes an instructional program that, in lieu of credit hours or clock hours as the measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment. In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to be an eligible program.''.

(c) CORRESPONDENCE COURSES.—Section 484(*l*)(1) (20 U.S.C. 1091(*l*)(1)) is amended—

(1) in subparagraph (A)—

(A) by striking ''for a program of study of 1 year or longer''; and

(B) by striking ''unless the total'' and all that follows through ''courses at the institution''; and

(2) by amending subparagraph (B) to read as follows:

''(B) EXCEPTION.—Subparagraph (A) shall not apply to an institution or school described in section 3(3)(C) of the Carl D. Perkins Vocational and Technical Education Act of 1998.''.

**SEC. 8022. STUDENT ELIGIBILITY.**

(a) FRAUD: REPAYMENT REQUIRED.—Section 484(a) (20 U.S.C. 1091(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting ''; and''; and

(2) by adding at the end the following new paragraph:

''(6) if the student has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, have completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud.''.

(b) VERIFICATION OF INCOME DATE.—Paragraph (1) of section 484(q) (20 U.S.C. 1091(q)) is amended to read as follows:

''(1) CONFIRMATION WITH IRS.—The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the information specified in section 6103(l)(13) of the Internal Revenue Code of 1986 reported by applicants (including parents) under this title on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.''.

(c) SUSPENSION OF ELIGIBILITY FOR DRUG OFFENSES.—Section 484(r)(1) (20 U.S.C. 1091(r)(1)) is amended by striking everything preceding the table and inserting the following:

''(1) IN GENERAL.—A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following table:''.

**SEC. 8023. INSTITUTIONAL REFUNDS.**

Section 484B (20 U.S.C. 1091b) is amended—

(1) in the matter preceding clause (i) of subsection (a)(2)(A), by striking ''a leave of'' and inserting ''1 or more leaves of'';

(2) in subsection (a)(3)(B)(ii), by inserting ''(as determined in accordance with subsection (d))'' after ''student has completed'';

(3) in subsection (a)(3)(C)(i), by striking ''grant or loan assistance under this title'' and inserting ''grant assistance under subparts 1 and 3 of part A, or loan assistance under parts B, D, and E,'';

(4) in subsection (a)(4), by amending subparagraph (A) to read as follows:

''(A) IN GENERAL.—After determining the eligibility of the student for a late disbursement or post-withdrawal disbursement (as required in regulations prescribed by the Secretary), the institution of higher education shall contact the borrower and obtain confirmation that the loan funds are still required by the borrower. In making such contact, the institution shall explain to the borrower the borrower's obligation to repay the funds following any such disbursement. The institution shall document in the borrower's file the result of such contact and the final determination made concerning such disbursement.'';

(5) in subsection (b)(1), by inserting ''not later than 45 days from the determination of withdrawal'' after ''return'';

(6) in subsection (b)(2), by amending subparagraph (C) to read as follows:

''(C) GRANT OVERPAYMENT REQUIREMENTS.—

''(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), a student shall only be required to return grant assistance in the amount (if any) by which—

''(I) the amount to be returned by the student (as determined under subparagraphs (A) and (B)), exceeds

''(II) 50 percent of the total grant assistance received by the student under this title for the payment period or period of enrollment.

''(ii) MINIMUM.—A student shall not be required to return amounts of $50 or less.'';

(7) in subsection (d), by striking ''(a)(3)(B)(i)'' and inserting ''(a)(3)(B)''; and

(8) in subsection (d)(2), by striking ''clock hours—'' and all that follows through the period and inserting ''clock hours scheduled to be completed by the student in that period as of the day the student withdrew.''.

**SEC. 8024. COLLEGE ACCESS INITIATIVE.**

Part G is further amended by inserting after section 485C (20 U.S.C. 1092c) the following new section:

**''SEC. 485D. COLLEGE ACCESS INITIATIVE.**

''(a) STATE-BY-STATE INFORMATION.—The Secretary shall direct each guaranty agency with which the Secretary has an agreement under section 428(c) to provide to the Secretary the information necessary for the development of Internet web links and access for students and families to a comprehensive listing of the postsecondary education opportunities, programs, publications, Internet web sites, and other services available in the States for which such agency serves as the designated guarantor.

''(b) GUARANTY AGENCY ACTIVITIES.—

''(1) PLAN AND ACTIVITY REQUIRED.—Each guaranty agency with which the Secretary has an agreement under section 428(c) shall develop a plan, and undertake the activity necessary, to gather the information required under subsection (a) and to make such information available to the public and to the Secretary in a form and manner as prescribed by the Secretary.

''(2) ACTIVITIES.—Each guaranty agency shall undertake such activities as are necessary to promote access to postsecondary education for students through providing information on college planning, career preparation, and paying for college. The guaranty agency shall publicize such information and coordinate such activities with other entities that either provide or distribute such information in the States for which such guaranty agency serves as the designated guarantor.

''(3) FUNDING.—The activities required by this section may be funded from the guaranty agency's Operating Fund established pursuant to section 422B and, to the extent funds remain, from earnings on the restricted account established pursuant to section 422(h)(4).

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require a guaranty agency to duplicate any efforts under way on the date of enactment of the Higher Education Reconciliation Act of 2005 that meet the requirements of this section.

''(c) ACCESS TO INFORMATION.—

''(1) SECRETARY'S RESPONSIBILITY.—The Secretary shall ensure the availability of the information provided, by the guaranty agencies in accordance with this section, to students, parents, and other interested individuals, through Internet web links or other methods prescribed by the Secretary.

''(2) GUARANTY AGENCY RESPONSIBILITY.—The guaranty agencies shall ensure that the information required by this section is available without charge in printed format for students and parents requesting such information.

''(3) PUBLICITY.—Not later than 270 days after the date of enactment of the Higher Education Reconciliation Act of 2005, the Secretary and guaranty agencies shall publicize the availability of the information required by this section, with special emphasis on ensuring that populations that are traditionally underrepresented in postsecondary education are made aware of the availability of such information.''.

**SEC. 8026. WAGE GARNISHMENT REQUIREMENT.**

Section 488A(a)(1) (20 U.S.C. 1095a(a)(1)) is amended by striking ''10 percent'' and inserting ''15 percent''.

**Subtitle B—Pensions**

**SEC. 8201. INCREASES IN PBGC PREMIUMS.**

(a) FLAT-RATE PREMIUMS.—

(1) SINGLE-EMPLOYER PLANS.—

(A) IN GENERAL.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended by striking ''$19'' and inserting ''$30''.

(B) ADJUSTMENT FOR INFLATION.—Section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

''(F) For each plan year beginning in a calendar year after 2006, there shall be substituted for the premium rate specified in clause (i) of subparagraph (A) an amount equal to the greater of—

''(i) the product derived by multiplying the premium rate specified in clause (i) of subparagraph (A) by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

''(II) the national average wage index (as so defined) for 2004; and

''(ii) the premium rate in effect under clause (i) of subparagraph (A) for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.''.

(2) MULTIEMPLOYER PLANS.—

(A) IN GENERAL.—Section 4006(a)(3)(A) of such Act (29 U.S.C. 1306(a)(3)(A)) is amended—

(i) in clause (iii)—

(I) by inserting ''and before January 1, 2006,'' after ''Act of 1980,''; and

(II) by striking the period at the end and inserting '', or''; and

(ii) by adding at the end the following:

''(iv) in the case of a multiemployer plan, for plan years beginning after December 31, 2005, $8.00 for each individual who is a participant in such plan during the applicable plan year.''.

(B) ADJUSTMENT FOR INFLATION.—Section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)), as amended by this subsection, is amended by adding at the end the following new subparagraph:

''(G) For each plan year beginning in a calendar year after 2006, there shall be substituted for the premium rate specified in clause (iv) of subparagraph (A) an amount equal to the greater of—

''(i) the product derived by multiplying the premium rate specified in clause (iv) of subparagraph (A) by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

''(II) the national average wage index (as so defined) for 2004; and

''(ii) the premium rate in effect under clause (iv) of subparagraph (A) for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.''.

(b) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—Subsection (a) of section 4006 of such Act (29 U.S.C. 1306) is amended by adding at the end the following:

''(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

''(A) IN GENERAL.—If there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) or section 4042, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to $1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

''(B) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—In the case of a single-employer plan terminated under section 4041(c)(2)(B)(ii) or under section 4042 during pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11, United States Code, or under any similar law of a State or a political subdivision of a State (or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) shall not apply to such plan until the date of the discharge or dismissal of such person in such case.

''(C) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—The term 'applicable 12-month period' means—

''(I) the 12-month period beginning with the first month following the month in which the termination date occurs, and

''(II) each of the first two 12-month periods immediately following the period described in subclause (I).

''(ii) PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—In any case in which the requirements of subparagraph (B)(i)(I) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the 12-month period described in clause (i)(I) shall be the

12-month period beginning with the first month following the month which includes the earliest date as of which each such person is discharged or dismissed in the case described in such clause in connection with such person.

''(D) COORDINATION WITH SECTION 4007.—

''(i) Notwithstanding section 4007—

''(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

''(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

''(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.

''(E) TERMINATION.—Subparagraph (A) shall not apply with respect to any plan terminated after December 31, 2010.''.

(c) CONFORMING AMENDMENT.—Section 4006(a)(3)(B) of such Act (29 U.S.C. 1306(a)(3)(B)) is amended by striking ''subparagraph (A)(iii)'' and inserting ''clause (iii) or (iv) of subparagraph (A)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (b) shall apply to plans terminated after December 31, 2005.

(B) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY.—The amendment made by subsection (b) shall not apply to a termination of a single-employer plan that is terminated during the pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), if the proceeding is pursuant to a bankruptcy filing occurring before October 18, 2005.

## TITLE H—LIHEAP PROVISIONS

**SEC. 9001. FUNDING AVAILABILITY.**

(a) IN GENERAL.—In addition to amounts otherwise made available, there are appropriated, out of any money in the Treasury not otherwise appropriated, to the Secretary of Health and Human Services for a 1-time only obligation and expenditure—

(1) $250,000,000 for fiscal year 2007 for allocation under section 2604(a) through (d) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(a) through (d)); and

(2) $750,000,000 for fiscal year 2007 for allocation under section 2604(e) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(e)).

(b) SUNSET.—The provisions of this section shall terminate, be null and void, and have no force and effect whatsoever after September 30, 2007. No monies provided for under this section shall be available after such date.

## TITLE X—JUDICIARY RELATED PROVISIONS

### Subtitle A—Civil Filing Adjustments

**SEC. 10001. CIVIL CASE FILING FEE INCREASES.**

(a) CIVIL ACTIONS FILED IN DISTRICT COURTS.—Section 1914(a) of title 28, United States Code, is amended by striking ''$250'' and inserting ''$350''.

(b) APPEALS FILED IN COURTS OF APPEALS.—The $250 fee for docketing a case on appeal or review, or docketing any other proceeding, in a court of appeals, as prescribed by the Judicial Conference, effective as of January 1, 2005, under section 1913 of title 28, United States Code, shall be increased to $450.

(c) EXPENDITURE LIMITATION.—Incremental amounts collected by reason of the enactment of this section shall be deposited in a special fund in the Treasury to be established after the enactment of this Act. Such amounts shall be available for the purposes specified in section 1931(a) of title 28, United States Code, but only to the extent specifically appropriated by an Act of Congress enacted after the enactment of this Act.

(d) EFFECTIVE DATE.—This section and the amendment made by this section shall take effect 60 days after the date of the enactment of this Act.

### Subtitle B—Bankruptcy Fees

**SEC. 10002. BANKRUPTCY FEES.**

(a) BANKRUPTCY FILING FEES.—Section 1930(a) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A) by striking ''$220'' and inserting ''$245''; and

(B) in subparagraph (B) by striking ''$150'' and inserting ''$235''; and

(2) in paragraph (2) by striking ''$1,000'' and inserting ''$2,750''.

(b) EXPENDITURE LIMITATION.—Incremental amounts collected by reason of the amendments made by subsection (a) shall be deposited in a special fund in the Treasury to be established after the enactment of this Act. Such amounts shall be available for the purposes specified in section 1931(a) of title 28, United States Code, but only to the extent specifically appropriated by an Act of Congress enacted after the enactment of this Act.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 60 days after the date of the enactment of this Act.

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**SA 2692.** Mr. FRIST (for Mrs. FEINSTEIN (for herself and Mr. BROWNBACK)) proposed an amendment to the bill S. 119, to provide for the protection of unaccompanied alien children, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Unaccompanied Alien Child Protection Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

Sec. 101. Procedures when encountering unaccompanied alien children.
Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 103. Appropriate conditions for detention of unaccompanied alien children.
Sec. 104. Repatriated unaccompanied alien children.
Sec. 105. Establishing the age of an unaccompanied alien child.
Sec. 106. Effective date.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO CHILD ADVOCATES AND COUNSEL

Sec. 201. Child advocates.
Sec. 202. Counsel.
Sec. 203. Preservation of law enforcement authority.
Sec. 204. Effective date; applicability.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile classification.
Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 303. Report.
Sec. 304. Effective date.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children's asylum claims.
Sec. 402. Unaccompanied refugee children.
Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

Sec. 501. Authorization of appropriations.

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 602. Technical corrections.
Sec. 603. Effective date.

**SEC. 2. DEFINITIONS.**

(a) IN GENERAL.—In this Act:

(1) COMPETENT.—The term ''competent'', in reference to counsel, means an attorney, or a representative authorized to represent unaccompanied alien children in immigration proceedings or matters, who—

(A) complies with the duties set forth in this Act;

(B)(i) is properly qualified to handle matters involving unaccompanied alien children; or

(ii) is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters; and

(C) if an attorney—

(i) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia; and

(ii) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law.

(2) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(3) DIRECTOR.—The term ''Director'' means the Director of the Office.

(4) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(6) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' has the meaning given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

(7) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

(c) RULE OF CONSTRUCTION.—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

## TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

### SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), if a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in this subparagraph;

(ii) such child does not have a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child's country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right, and shall be informed of that right in the child's native language—

(i) to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation; and

(ii) to consult, telephonically, with the Office.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Department shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Department shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

(D) TRAFFICKING VICTIMS.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—

(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Department is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Department that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Department who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after a determination is made that such child is an unaccompanied alien child;

(ii) in the case of a child whose custody and care has been retained or assumed by the Department pursuant to subparagraph (B) or (C) of paragraph (1), following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iii) in the case of a child who was previously released to an individual or entity described in section 102(a)(1), upon a determination by the Director that such individual or entity is no longer able to care for the child.

(B) TRANSFER TO THE DEPARTMENT.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall transfer the care and custody of such child to the Department.

(C) PROMPTNESS OF TRANSFER.—In the event of a need to transfer a child under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets such age requirements shall be made in accordance with section 105, unless otherwise specified in subsection (b)(2)(B).

(d) ACCESS TO ALIEN.—The Secretary of Homeland Security shall permit the Office to have reasonable access to aliens in the custody of the Secretary to ensure a prompt determination of the age of such alien, if necessary under subsection (b)(2)(B).

### SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under paragraph (4), section 103(a)(2), and section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An individual or entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the Office shall decide who is a qualified adult or entity and promulgate regulations in accordance with such decision.

(2) SUITABILITY ASSESSMENT.—

(A) GENERAL REQUIREMENTS.—Notwithstanding paragraph (1), and subject to the requirements of subparagraph (B), no unaccompanied alien child shall be placed with a person or entity described in any of subparagraphs (A) through (F) of paragraph (1) unless the Director certifies, in writing, that the proposed custodian is capable of providing for the child's physical and mental well-being, based on—

(i) with respect to an individual custodian—

(I) verification of such individual's identity and employment;

(II) a finding that such individual has not engaged in any activity that would indicate a potential risk to the child, including the activities described in paragraph (4)(A);

(III) a finding that such individual has no open investigation by a state or local child protective services authority due to suspected child abuse or neglect;

(IV) verification that such individual has a plan for the provision of care for the child; and

(V) verification of familial relationship of such individual, if any relationship is claimed; and

(ii) verification of nature and extent of previous relationship;

(iii) with respect to a custodial entity, verification of such entity's appropriate licensure by the State, county, or other applicable unit of government; and

(iv) such other information as the Director determines appropriate.

(B) HOME STUDY.—

(i) IN GENERAL.—A home study shall be conducted prior to release with respect to each proposed custodian described in any of subparagraphs (A) through (F) of paragraph (1) unless waived by the Director.

(ii) SPECIAL NEEDS CHILDREN.—In the case of a special needs child with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)), a home study shall be conducted to determine if the child's needs can be properly met by the custodian.

(C) CONTRACT AUTHORITY.—The Director may, by grant or contract, arrange for some or all of the activities under this section to be carried out by—

(i) an agency of the State of the child's proposed residence;

(ii) an agency authorized by such State to conduct such activities; or

(iii) an appropriate voluntary or nonprofit agency.

(D) DATABASE ACCESS.—In conducting suitability assessments, the Director shall be given access to all relevant information in the appropriate Federal, State, and local law enforcement and immigration databases.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, and subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall—

(i) assess the suitability of placing the child with the parent or legal guardian; and

(ii) make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—Programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of involvement in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of involvement in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action, which may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—The Director may award grants to, and enter into contracts with, voluntary agencies to carry out this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(6) REIMBURSEMENT OF STATE EXPENSES.—The Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this Act or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

(c) REQUIRED DISCLOSURE.—The Secretary of Health and Human Services or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

**SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.**

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to such behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—A child shall not be placed with an entity described in section 102(a)(1)(E), unless the entity is licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director and the Secretary of Homeland Security shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Regulations promulgated under subparagraph (A) shall provide that all children are notified of such standards orally and in writing in the child's native language.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

**SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.**

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The annual Country Reports on Human Rights Practices published by the Department of State shall contain an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Department shall consult the Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to repatriate unaccompanied alien children.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;

(B) a description of the type of immigration relief sought and denied to such children;

(C) a statement of the nationalities, ages, and gender of such children;

(D) a description of the procedures used to effect the removal of such children from the United States;

(E) a description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin; and

(F) any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

**SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.**

(a) PROCEDURES.—

(1) IN GENERAL.—The Director shall develop procedures, in consultation with the Secretary, to make a prompt determination of the age of an alien, to be used—

(A) by the Department, with respect to aliens in the custody of the Department; and

(B) by the Office, with respect to aliens in the custody of the Office.

(2) EVIDENCE.—The procedures developed under paragraph (1) shall—

(A) permit the presentation of multiple forms of evidence, including testimony of

the alien, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention; and

(B) allow the appeal of a determination to an immigration judge.

(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Radiographs or the attestation of an alien shall not be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under this Act or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the Government.

**SEC. 106. EFFECTIVE DATE.**

This title shall take effect on the date which is 90 days after the date of enactment of this Act.

**TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO CHILD ADVOCATES AND COUNSEL**

**SEC. 201. CHILD ADVOCATES.**

(a) ESTABLISHMENT OF CHILD ADVOCATE PROGRAM.—

(1) APPOINTMENT.—The Director may appoint a child advocate, who meets the qualifications described in paragraph (2), for an unaccompanied alien child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a child advocate under this paragraph.

(2) QUALIFICATIONS OF CHILD ADVOCATE.—

(A) IN GENERAL.—No person shall serve as a child advocate unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A child advocate shall not be an employee of the Department, the Office, or the Executive Office for Immigration Review.

(3) DUTIES.—The child advocate shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to the child's presence in the United States, including facts and circumstances—

(i) arising in the country of the child's nationality or last habitual residence; and

(ii) arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that—

(i) the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(ii) the child understands the nature of the legal proceedings or matters and determinations made by the court, and that all information is conveyed to the child in an age-appropriate manner; and

(F) report factual findings relating to—

(i) information collected under subparagraph (B);

(ii) the care and placement of the child during the pendency of the proceedings or matters; and

(iii) any other information collected under subparagraph (D).

(4) TERMINATION OF APPOINTMENT.—The child advocate shall carry out the duties described in paragraph (3) until the earliest of the date on which—

(A) those duties are completed;

(B) the child departs the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child attains the age of 18; or

(E) the child is placed in the custody of a parent or legal guardian.

(5) POWERS.—The child advocate—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child before such notification.

(b) TRAINING.—

(1) IN GENERAL.—The Director shall provide professional training for all persons serving as guardians ad litem under this section.

(2) TRAINING TOPICS.—The training provided under paragraph (1) shall include training in—

(A) the circumstances and conditions that unaccompanied alien children face; and

(B) various immigration benefits for which such alien child might be eligible.

(c) PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a).

(2) PURPOSE.—The purpose of the pilot program established under paragraph (1) is to—

(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the child advocate provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM.—

(A) SELECTION OF SITE.—The Director shall select 3 sites in which to operate the pilot program established under paragraph (1).

(B) NUMBER OF CHILDREN.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program site is established under paragraph (1), the Director shall submit a report on the achievement of the purposes described in paragraph (2) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

**SEC. 202. COUNSEL.**

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director should ensure, to the extent practicable, that all unaccompanied alien children in the custody of the Office or the Department, who are not described in section 101(a)(2), have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director should—

(A) make every effort to utilize the services of competent pro bono counsel who agree to provide representation to such children without charge; and

(B) ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities where there is a demonstrated capacity for competent pro bono representation.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—For purposes of this subsection, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(4) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—The Director shall enter into contracts with, or award grants to, nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys.

(B) SUBCONTRACTING.—Nonprofit agencies may enter into subcontracts with, or award grants to, private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(C) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.—In awarding grants and entering into contracts with agencies under this paragraph, the Director shall take into consideration the capacity of the agencies in question to properly administer the services covered by such grants or contracts without an undue conflict of interest.

(5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(A) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings. Such guidelines shall be based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES.—The guidelines developed under subparagraph (A) shall be designed to help protect each child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION.—The Executive Office for Immigration Review shall adopt the guidelines developed under subparagraph (A) and submit the guidelines for adoption by national, State, and local bar associations.

(b) DUTIES.—Counsel under this section shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Department;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Department; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(c) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) ACCESS TO RECOMMENDATIONS OF CHILD ADVOCATE.—Counsel shall be given an opportunity to review the recommendation by the child advocate affecting or involving a client who is an unaccompanied alien child.

(f) COUNSEL FOR UNACCOMPANIED ALIEN CHILDREN.—Nothing in this Act requires the United States to pay for counsel to any unaccompanied alien child.

**SEC. 203. PRESERVATION OF LAW ENFORCEMENT AUTHORITY.**

(a) IN GENERAL.—The child advocate or counsel appointed under this title shall not interfere with Federal investigators or prosecutors in a Federal criminal investigation or prosecution in which the child is a victim or witness.

(b) DEFINITION.—In subsection (a), the term ''interfere with'' shall include—

(1) restricting access to a victim or witness;

(2) encouraging noncooperation with Federal investigators or prosecutors; and

(3) being present during interviews of the child by Federal investigators or prosecutors without the permission of the investigators or prosecutors.

**SEC. 204. EFFECTIVE DATE; APPLICABILITY.**

(a) EFFECTIVE DATE.—This title shall take effect 180 days after the date of enactment of this Act.

(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

## TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

**SEC. 301. SPECIAL IMMIGRANT JUVENILE CLASSIFICATION.**

(a) J CLASSIFICATION.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant, who is 18 years of age or younger on the date of application for the classification and who is present in the United States—

''(i) who by a court order supported by written findings of fact, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or has been legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined by written findings of fact in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of U.S. Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien,

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:

''(A) paragraphs (4), (5)(A), (6)(A), (7)(A), 9(B), and 9(C)(i)(I) of section 212(a) shall not apply; and''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), may be eligible for funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

(d) TRANSITION RULE.—Notwithstanding any other provision of law, any child described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) who filed an application for special immigrant juvenile classification before the date of enactment of this Act and who was 19, 20, or 21 years of age on the date such application was filed shall not be denied such classification after the date of enactment of this Act because of such alien's age.

**SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.**

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training materials, and if requested, direct training, to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children.

(2) CURRICULUM.—The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(3) VIDEO CONFERENCING.—If direct training is requested under this subsection, such training may be conducted through video conferencing.

(b) TRAINING OF DEPARTMENT PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Department who come into contact with unaccompanied alien children. Training for Border Patrol agents and immigration inspectors shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

**SEC. 303. REPORT.**

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this Act;

(3) data regarding the provision of child advocate and counsel services under this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

**SEC. 304. EFFECTIVE DATE.**

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

## TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

**SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

(a) SENSE OF CONGRESS.—Congress—

(1) commends the former Immigration and Naturalization Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the implementation of such guidelines by the Department in an effort to facilitate the handling of children's affirmative asylum claims;

(2) commends the Executive Office for Immigration Review of the Department of Justice for its issuance of its ''Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children'', dated September 2004, and encourages and supports the continued implementation of such guidelines by the Executive Office for Immigration Review in its handling of children's asylum claims before immigration judges; and

(3) understands that the guidelines described in paragraph (2) do not specifically address the issue of asylum claims, but go to the broader issue of unaccompanied alien children in general.

(b) TRAINING.—

(1) IMMIGRATION OFFICERS.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers.

(2) IMMIGRATION JUDGES.—The Executive Office for Immigration Review shall—

(A) provide periodic comprehensive training under the ''Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children'' and the ''Guidelines for Children's Asylum Claims'' to immigration judges and members of the Board of Immigration Appeals; and

(B) redistribute to all Immigration Courts the ''Guidelines for Children's Asylum Claims'' as part of its training of immigration judges.

(3) USE OF VOLUNTARY AGENCIES.—Voluntary agencies shall be allowed to assist in the training described in this subsection.

**SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

**SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.**

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Department, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a), shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

''(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child as defined in section 101(a)(51).''.

**TITLE V—AUTHORIZATION OF APPROPRIATIONS**

**SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—

(1) the provisions of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

(2) the provisions of this Act.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) shall remain available until expended.

**TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002**

**SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.**

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking ''and'' at the end;

(2) in subparagraph (L), by striking the period at the end and inserting '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and''; and

(3) by adding at the end the following:

''(M) ensuring minimum standards of care for all unaccompanied alien children—

''(i) for whom detention is necessary; and

''(ii) who reside in settings that are alternative to detention.''.

(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

''(4) AUTHORITY.—In carrying out the duties under paragraph (3), the Director is authorized to—

''(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2005; and

''(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2005, including the power to—

''(i) declare providers to be in breach and seek damages for noncompliance;

''(ii) terminate the contracts of providers that are not in compliance with such conditions; and

''(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section.''.

**SEC. 602. TECHNICAL CORRECTIONS.**

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

(1) in paragraph (3), by striking ''paragraph (1)(G)'' and inserting ''paragraph (1)''; and

(2) by adding at the end the following:

''(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.''.

**SEC. 603. EFFECTIVE DATE.**

The amendments made by this title shall take effect as if included in the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

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**SA 2693.** Mr. FRIST (for Mr. LUGAR) proposed an amendment to the bill S. 1315, to require a report on progress toward the Millennium Development Goals, and for other purposes; as follows:

On page 13, line 21–22, strike ''as a fundamental guide on which to base their planning,''.

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**SA 2694.** Mr. FRIST (for Mr. CRAIG (for himself and Mr. AKAKA)) proposed an amendment to the bill S. 1182, to amend title 38, United States Code, to improve health care for veterans, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Veterans Health Care Act of 2005''.

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment or repeal to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; references to title 38, United States Code; table of contents.
Sec. 2. Care for newborn children of women veterans receiving maternity care.
Sec. 3. Enhancement of payer provisions for health care furnished to certain children of Vietnam veterans.
Sec. 4. Improvements to homeless veterans service providers programs.
Sec. 5. Additional mental health providers.
Sec. 6. Pay comparability for chief nursing officer, office of nursing services.
Sec. 7. Cost comparison studies.
Sec. 8. Improvements and expansion of mental health services.
Sec. 9. Disclosure of medical records.
Sec. 10. Expansion of National Guard Outreach Program.
Sec. 11. Expansion of tele-health services.
Sec. 12. Mental health data sources report.
Sec. 13. Strategic plan for long-term care.
Sec. 14. Blind rehabilitation outpatient specialists.
Sec. 15. Compliance report.
Sec. 16. Health care and services for veterans affected by hurricane Katrina.
Sec. 17. Reimbursement for certain veterans' outstanding emergency treatment expenses.
Sec. 18. Conveyance of Federal land in exchange for fair market value consideration.
Sec. 19. Technical and clerical amendments.

**SEC. 2. CARE FOR NEWBORN CHILDREN OF WOMEN VETERANS RECEIVING MATERNITY CARE.**

(a) IN GENERAL.—Subchapter VIII of chapter 17 is amended by adding at the end the following:

**''§ 1786. Care for newborn children of women veterans receiving maternity care**

''The Secretary may furnish care to a newborn child of a woman veteran, who is receiving maternity care furnished by the Department, for not more than 14 days after the birth of the child if the veteran delivered the child in a Department facility or in another facility pursuant to a Department contract for the delivery services.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1785 the following:

''1786. Care for newborn children of women veterans receiving maternity care.''.

**SEC. 3. ENHANCEMENT OF PAYER PROVISIONS FOR HEALTH CARE FURNISHED TO CERTAIN CHILDREN OF VIETNAM VETERANS.**

(a) HEALTH CARE FOR SPINA BIFIDA AND ASSOCIATED DISABILITIES.—Section 1803 is amended—

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

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

''(c)(1) If a payment made by the Secretary for health care under this section is less than

the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.

''(2) The health care provider or agent may not impose any additional charge on the beneficiary who received the health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section.

''(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary.

''(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.''.

(b) HEALTH CARE FOR BIRTH DEFECTS AND ASSOCIATED DISABILITIES.—Section 1813 is amended—

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

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

''(c)(1) If payment made by the Secretary for health care under this section is less than the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.

''(2) The health care provider or agent may not impose any additional charge on the beneficiary who received health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section.

''(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary.

''(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.''.

**SEC. 4. IMPROVEMENTS TO HOMELESS VETERANS SERVICE PROVIDERS PROGRAMS.**

(a) PERMANENT AUTHORITY.—Section 2011 (a) is amended—

(1) in paragraph (1), by striking ''(1)''; and

(2) by striking paragraph (2).

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) COMPREHENSIVE SERVICE PROGRAMS FOR HOMELESS VETERANS.—Section 2013 is amended to read as follows:

**''§ 2013. Authorization of appropriations**

''There are authorized to be appropriated $130,000,000 for fiscal year 2006 and each subsequent fiscal year to carry out this subchapter.''.

(2) HOMELESS VETERAN SERVICE PROVIDER TECHNICAL ASSISTANCE PROGRAM.—Section 2064(b) is amended to read as follows:

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 2006 through 2011 to carry out the programs under this section.''.

**SEC. 5. ADDITIONAL MENTAL HEALTH PROVIDERS.**

(a) QUALIFICATIONS.—Section 7402(b) is amended—

(1) by redesignating paragraph (10) as paragraph (12); and

(2) by inserting after paragraph (9) the following:

''(10) MARRIAGE AND FAMILY THERAPIST.—To be eligible to be appointed to a marriage and family therapist position, a person shall—

''(A) hold a master's degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and

''(B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.

''(11) LICENSED PROFESSIONAL MENTAL HEALTH COUNSELORS.—To be eligible to be appointed to a licensed professional mental health counselor position, a person shall—

''(A) hold a master's degree in mental health counseling, or a related field, from a college or university approved by the Secretary; and

''(B) be licensed or certified to independently practice mental health counseling.''.

(b) REPORT ON MARRIAGE AND FAMILY THERAPY WORKLOAD.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Under Secretary for Health, Department of Veterans Affairs, shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the provisions of post-traumatic stress disorder treatment by marriage and family therapists.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the actual and projected workloads in facilities of the Veterans Readjustment Counseling Service and the Veterans Health Administration for the provision of marriage and family counseling for veterans diagnosed with, or otherwise in need of treatment for, post-traumatic stress disorder;

(B) the resources available and needed to support the workload projections described in subparagraph (A);

(C) an assessment by the Under Secretary for Health of the effectiveness of treatment by marriage and family therapists; and

(D) recommendations, if any, for improvements in the provision of such counseling treatment.

**SEC. 6. PAY COMPARABILITY FOR CHIEF NURSING OFFICER, OFFICE OF NURSING SERVICES.**

Section 7404 is amended—

(1) in subsection (d), by striking ''subchapter III and in'' and inserting ''subsection (e), subchapter III, and''; and

(2) by adding at the end the following:

''(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid at a rate not to exceed the maximum rate established for the Senior Executive Service under section 5382 of title 5 United States Code, as determined by the Secretary.''.

**SEC. 7. COST COMPARISON STUDIES.**

(a) STUDIES AUTHORIZED.—

(1) IN GENERAL.—Notwithstanding section 8110(a)(5), the Secretary of Veterans Affairs may conduct studies to compare the amount that would be expended if private contractors provided specific commercial or industrial products and services for the Veterans Health Administration with the amount that would be expended if the Department of Veterans Affairs provided such products and services for the Veterans Health Administration.

(2) LIMITATION.—In the course of conducting the private-public cost comparison studies under paragraph (1), a private contractor may not receive an advantage for a proposal that would reduce costs for the Department of Veterans Affairs by—

(A) not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of that activity or function under the contract; or

(B) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Veterans Affairs for health benefits for civilian employees under chapter 89 of title 5, United States Code.

(3) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated $15,000,000 to carry out paragraph (1), of which—

(i) not more than $7,500,000 shall be available to evaluate activities that have been performed by employees of the Federal Government; and

(ii) not more than $7,500,000 shall be available to evaluate activities that have been performed by private contractors.

(B) SUNSET DATE.—This paragraph is repealed on September 30, 2007.

(b) REPORT.—Not later than March 15, 2007, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report that—

(1) identifies the amount expended by the Department of Veterans Affairs during fiscal year 2006 to conduct cost comparison studies, including—

(A) studies conducted in accordance with Office of Management and Budget Circular A–76; and

(B) studies to identify the most efficient internal processes for the Department of Veterans Affairs;

(2) summarizes the benefits and burdens of the studies described in paragraph (1);

(3) analyzes each approach for determining—

(A) the best method of allocating the resources of the Department of Veterans Affairs; and

(B) the appropriate use of nongovernmental employees; and

(4) identifies the amount of savings (calculated in terms of full-time employee reinvestment), if any, to the Department of Veterans Affairs as a result of—

(A) the private-public cost comparison studies conducted under subsection (a); and

(B) the Department of Veterans Affairs internal processes for the same positions.

**SEC. 8. IMPROVEMENTS AND EXPANSION OF MENTAL HEALTH SERVICES.**

(a) FINDINGS.—Congress makes the following findings:

(1) Mental health treatment capacity at community-based outpatient clinics remains inadequate and inconsistent, despite the requirement under section 1706(c) of title 38, United States Code, that every primary care health care facility of the Department of Veterans Affairs develop and carry out a plan to meet the mental health care needs of veterans who require such services.

(2) In 2001, the minority staff of the Committee on Veterans' Affairs of the Senate conducted a survey of community-based outpatient clinics and found that there was no established systemwide baseline of acceptable mental health service levels at such clinics.

(3) In February 2005, the Government Accountability Office reported that the Department of Veterans Affairs had not fully met

any of the 24 clinical care and education recommendations made in 2004 by the Special Committee on Post-Traumatic Stress Disorder of the Under Secretary for Health, Veterans Health Administration.

(b) CLINICAL SERVICES AND EDUCATION.—

(1) IN GENERAL.—The Secretary of Veterans affairs shall—

(A) expand the number of clinical treatment teams principally dedicated to the treatment of post-traumatic stress disorder in medical facilities of the Department of Veterans Affairs;

(B) expand and improve the services available to diagnose and treat substance abuse;

(C) expand and improve tele-health initiatives to provide better access to mental health services in areas of the country in which the Secretary determines that a need for such services exist due to the distance of such locations from an appropriate facility of the Department of Veterans Affairs;

(D) improve education programs available to primary care delivery professionals and dedicate such programs to recognize, treat, and clinically manage veterans with mental health care needs;

(E) expand the delivery of mental health services in community-based outpatient clinics of the Department of Veterans Affairs in which such services are not available as of the date of enactment of this Act; and

(F) expand and improve the Mental Health Intensive Case Management Teams for the treatment and clinical case management of veterans with serious or chronic mental illness.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $95,000,000 in each of fiscal years 2006 and 2007 to improve and expand the treatment services and options available to veterans in need of mental health treatment from the Department of Veterans Affairs, of which—

(A) $5,000,000 shall be allocated to carry out paragraph (1)(A);

(B) $50,000,000 shall be allocated to carry out paragraph (1)(B);

(C) $10,000,000 shall be allocated to carry out paragraph (1)(C);

(D) $1,000,000 shall be allocated to carry out paragraph (1)(D);

(E) $20,000,000 shall be allocated to carry out paragraph (1)(E); and

(F) $5,000,000 shall be allocated to carry out paragraph (1)(F).

(c) REQUIRED CAPACITY FOR COMMUNITY-BASED OUTPATIENT CLINICS.—

(1) ACCOUNTABILITY FOR THE PROVISION OF MENTAL HEALTH SERVICES.—The Under Secretary shall take appropriate steps and provide necessary incentives (including appropriate performance incentives) to ensure that each Regional Director of the Veterans Health Administration is encouraged to—

(A) prioritize the provision of mental health services to veterans in need of such services;

(B) foster collaborative working environments among clinicians for the provision of mental health services; and

(C) conduct mental health consultations during primary care appointments.

(2) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—

(A) IN GENERAL.—The Secretary shall ensure that each community-based outpatient clinic of the Department has the capacity to provide, or monitor the provision of, mental health services to enrolled veterans in need of such services.

(B) SETTINGS.—In carrying out subparagraph (A), the Secretary shall ensure that mental health services are provided through—

(i) a community-based outpatient clinic of the Department by an employee of the Department;

(ii) referral to another facility of the Department;

(iii) contract with an appropriate mental health professional in the local community; or

(iv) tele-mental health service.

(3) REPORTING REQUIREMENT.—Not later than January 31, 2008, the Secretary of Veterans Affairs shall submit a report to Congress that—

(A) describes the status and availability of mental health services at community-based outpatient clinics;

(B) describes the substance of services available at such clinics; and

(C) includes the ratios between mental health staff and patients at such clinics.

(d) COOPERATION ON MENTAL HEALTH AWARENESS AND PREVENTION.—

(1) AGREEMENT.—The Secretary of Defense and the Secretary of Veterans Affairs shall enter into a Memorandum of Understanding—

(A) to ensure that separating service members receive standardized individual mental health and sexual trauma assessments as part of separation exams; and

(B) that includes the development of shared guidelines on how to conduct the assessments.

(2) ESTABLISHMENT OF JOINT VETERANS AFFAIRS–DEPARTMENT OF DEFENSE WORKGROUP ON MENTAL HEALTH.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall establish a joint workgroup on mental health, which shall be comprised of not less than 7 leaders in the field of mental health appointed from their respective departments.

(B) STUDY.—Not later than 1 year after the establishment of the workgroup under subparagraph (A), the workgroup shall analyze the feasibility, content, and scope of initiatives related to—

(i) combating stigmas and prejudices associated with service members who suffer from mental health disorders or readjustment issues, through the use of peer counseling programs or other educational initiatives;

(ii) ways in which the Department of Veterans Affairs can make their expertise in treating mental health disorders more readily available to Department of Defense mental health care providers;

(iii) family and spousal education to assist family members of veterans and service members to recognize and deal with signs of potential readjustment issues or other mental health disorders; and

(iv) the seamless transition of service members who have been diagnosed with mental health disorders from active duty to veteran status (in consultation with the Seamless Transition Task Force and other entities assisting in this effort).

(C) REPORT.—Not later than June 30, 2007, the Secretary of Defense and the Secretary of Veterans Affairs shall submit a report to Congress containing the findings and recommendations of the workgroup established under this paragraph.

(e) PRIMARY CARE CONSULTATIONS FOR MENTAL HEALTH.—

(1) GUIDELINES.—The Under Secretary for Health, Veterans Health Administration, shall establish systemwide guidelines for screening primary care patients for mental health disorders and illnesses.

(2) TRAINING.—Based upon the guidelines established under paragraph (1), the Under Secretary for Health, Veterans Health Administration, shall conduct appropriate training for clinicians of the Department of Veterans Affairs to carry out mental health consultations.

(f) CLINICAL TRAINING AND PROTOCOLS.—

(1) FINDINGS.—Congress finds that—

(A) the Iraq War Clinician Guide has tremendous value; and

(B) the Secretary of Defense and the National Center on Post Traumatic Stress Disorder should continue to work together to ensure that the mental health care needs of service members and veterans are met.

(2) COLLABORATION.—The National Center on Post Traumatic Stress Disorder shall collaborate with the Secretary of Defense—

(A) to enhance the clinical skills of military clinicians through training, treatment protocols, web-based interventions, and the development of evidence-based interventions; and

(B) to promote pre-deployment resilience and post-deployment readjustment among service members serving in Operation Iraqi Freedom and Operation Enduring Freedom.

(3) TRAINING.—The National Center on Post Traumatic Stress Disorder shall work with the Secretary of Defense to ensure that clinicians in the Department of Defense are provided with the training and protocols developed pursuant to paragraph (2)(A).

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for 2006 to carry out this subsection.

**SEC. 9. DISCLOSURE OF MEDICAL RECORDS.**

(a) LIMITED EXCEPTION TO CONFIDENTIALITY OF MEDICAL RECORDS.—Section 5701 is amended by adding at the end the following:

''(k)(1)(A) The Secretary may disclose the name and address of any individual described in subparagraph (C) to an entity described in subparagraph (B) in order to facilitate the determination by such entity whether the individual is, or after death will be, a suitable organ, tissue, or eye donor if—

''(i) the individual is near death (as determined by the Secretary) or is deceased; and

''(ii) the disclosure is permitted under regulations promulgated pursuant to section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

''(B) An entity described in this subparagraph is—

''(i) an organ procurement organization; or

''(ii) an entity that the Secretary has determined—

''(I) is substantially similar in function, professionalism, and reliability to an organ procurement organization; and

''(II) should be treated for purposes of this subsection in the same manner as an organ procurement organization.

''(C) An individual described in this subparagraph is—

''(i) a member or former member of the Armed Forces; or

''(ii) a dependent of a member or former member of the Armed Forces.

''(2) In this subsection, the term 'organ procurement organization' has the meaning given the term 'qualified organ procurement organization' in section 371(b) of the Public Health Service Act (42 U.S.C. 273(b)).

(b) DISCLOSURES FROM CERTAIN MEDICAL RECORDS.—Section 7332(b)(2) is amended by adding at the end the following:

''(E) To an entity described in paragraph (1)(B) of section 5701(k) of this title, but only to the extent authorized by such section.''.

**SEC. 10. EXPANSION OF NATIONAL GUARD OUTREACH PROGRAM.**

(a) REQUIREMENT.—The Secretary of Veterans Affairs shall expand the total number of personal employed by the Department of Veterans Affairs as part of the Readjustment Counseling Service's Global War on Terrorism Outreach Program (referred to in this section as the ''Program'').

(b) COORDINATION.—In carrying out subsection (a), the Secretary shall coordinate

participation in the Program by appropriate employees of the Veterans Benefits Administration and the Veterans Health Administration.

(c) INFORMATION AND ASSESSMENTS.—The Secretary shall ensure that—

(1) all appropriate health, education, and benefits information is available to returning members of the National Guard; and

(2) proper assessments of the needs in each of these areas is made by the Department of Veterans Affairs.

(d) COLLABORATION.—The Secretary of Veterans Affairs shall collaborate with appropriate State National Guard officials and provide such officials with any assets or services of the Department of Veterans Affairs that the Secretary determines to be necessary to carry out the Global War on Terrorism Outreach Program.

**SEC. 11. EXPANSION OF TELE-HEALTH SERVICES.**

(a) IN GENERAL.—The Secretary shall increase the number of Veterans Readjustment Counseling Service facilities capable of providing health services and counseling through tele-health linkages with facilities of the Veterans Health Administration.

(b) PLAN.—The Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a plan to implement the requirement under subsection (a), which shall describe the facilities that will have such capabilities at the end of each of fiscal years 2005, 2006, and 2007.

**SEC. 12. MENTAL HEALTH DATA SOURCES REPORT.**

(a) IN GENERAL.—Not less than 180 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit a report to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives describing the mental health data maintained by the Department of Veterans Affairs.

(b) CONTENTS.—The report submitted under subsection (a) shall include—

(1) a comprehensive list of the sources of all such data, including the geographic locations of facilities of the Department of Veterans Affairs maintaining such data;

(2) an assessment of the limitations or advantages to maintaining the current data configuration and locations; and

(3) any recommendations, if any, for improving the collection, use, and location of mental health data maintained by the Department of Veterans Affairs.

**SEC. 13. STRATEGIC PLAN FOR LONG-TERM CARE.**

(a) PUBLICATION.—Not later than 180 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall publish a strategic plan for long-term care.

(b) CONTENTS.—The plan published under subsection (a) shall—

(1) contain policies and strategies for—

(A) the delivery of care in domiciliaries, residential treatment facilities, and nursing homes, and for seriously mentally ill veterans;

(B) maximizing the use of State veterans homes;

(C) locating domiciliary units as close to patient populations as feasible; and

(D) identifying freestanding nursing homes as an acceptable care model;

(2) include data on—

(A) the care of catastrophically disabled veterans; and

(B) the geographic distribution of catastrophically disabled veterans;

(3) address the spectrum of noninstitutional long-term care options, including—

(A) respite care;

(B) home-based primary care;

(C) geriatric evaluation;

(D) adult day health care;

(E) skilled home health care; and

(F) community residential care; and

(4) provide—

(A) cost and quality comparison analyses of all the different levels of care;

(B) detailed information about geographic distribution of services and gaps in care; and

(C) specific plans for working with Medicare, Medicaid, and private insurance companies to expand care.

**SEC. 14. BLIND REHABILITATION OUTPATIENT SPECIALISTS.**

(a) FINDINGS.—Congress makes the following findings:

(1) There are approximately 135,000 blind veterans throughout the United States, including approximately 35,000 who are enrolled with the Department of Veterans Affairs. An aging veteran population and injuries incurred in Operation Iraqi Freedom and Operation Enduring Freedom are increasing the number of blind veterans.

(2) Since 1996, when the Department of Veterans Affairs hired its first 14 blind rehabilitation outpatient specialists (referred to in this section as ''Specialists'', Specialists have been a critical part of the continuum of care for blind and visually impaired veterans.

(3) The Department of Veterans Affairs operates 10 residential blind rehabilitation centers that are considered among the best in the world. These centers have had long waiting lists, with as many as 1,500 blind veterans waiting for openings in 2004.

(4) Specialists provide—

(A) critically needed services to veterans who are unable to attend residential centers or are waiting to enter such a program;

(B) a range of services, including training with living skills, mobility, and adaptation of manual skills; and

(C) pre-admission screening and follow-up care for blind rehabilitation centers.

(5) There are not enough Specialist positions to meet the increased numbers and needs of blind veterans.

(b) ESTABLISHMENT OF SPECIALIST POSITIONS.—Not later than 30 months after the date of enactment of this Act, the Secretary of Veterans Affairs shall establish an additional Specialist position at not fewer than 35 additional facilities of the Department of Veterans Affairs.

(c) SELECTION OF FACILITIES.—In identifying the most appropriate facilities to receive a Specialist position under this section, the Secretary shall—

(1) give priority to facilities with large numbers of enrolled legally blind veterans;

(2) ensure that each facility does not have such a position; and

(3) ensure that each facility is in need of the services of such Specialists.

(d) COORDINATION.—The Secretary shall coordinate the provision of blind rehabilitation services for veterans with services for the care of the visually impaired offered by State and local agencies, especially if such State and local agencies can provide similar services to veterans in settings located closer to the residences of such veterans.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,500,000 for each of the fiscal years 2006 through 2011.

**SEC. 15. COMPLIANCE REPORT.**

Section 1706(b)(5)(A) is amended by striking ''2004'' and inserting ''2006''.

**SEC. 16. HEALTH CARE AND SERVICES FOR VETERANS AFFECTED BY HURRICANE KATRINA.**

(a) REQUIREMENT FOR HOSPITAL CARE AND MEDICAL SERVICES FOR PRIORITY 8 VETERANS AFFECTED BY HURRICANE KATRINA.—

(1) IN GENERAL.—Notwithstanding any other provision of law and any notwithstanding any previous decisions made by the Secretary of Veterans Affairs pursuant to chapter 17 of title 38 United States Code, the Secretary shall provide necessary medical and health care services to any veteran affected by Hurricane Katrina as if such veteran was enrolled for care under section 1705 of title 38, United States Code.

(2) STATUS OF VETERANS.—For purposes of managing the health care system, as required under section 1705 of title 38, United States Code, a veteran who seeks care under paragraph (1) shall not be considered to be an enrollee of the health care system under such section unless the Secretary subsequently designates such a veteran as such an enrollee.

(b) PROHIBITION ON COLLECTION OF COPAYMENTS FOR VETERANS AFFECTED BY HURRICANE KATRINA.—In furnishing hospital care and medical services to any veteran affected by Hurricane Katrina, the Secretary shall not collect from, or with respect to, such veteran any payment for such care and services otherwise required under any provision of law, including any copayment for medications otherwise required under section 1722A of title 38, United States Code.

(c) DEFINITION.—In this section, the term ''veteran affected by Hurricane Katrina'' means any veteran who, as of August 29, 2005, resided in the catchment region of the Department of Veterans Affairs medical center in—

(1) New Orleans, Louisiana;

(2) Biloxi, Mississippi; or

(3) Gulfport, Mississippi.

(d) SUNSET PROVISION.—The authority under this section shall expire on January 31, 2006.

**SEC. 17. REIMBURSEMENT FOR CERTAIN VETERANS' OUTSTANDING EMERGENCY TREATMENT EXPENSES. .**

(a) IN GENERAL.—Subchapter III of chapter 17 is amended by inserting after section 1725 the following:

**''§ 1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable**

''(a)(1) Subject to subsection (c), the Secretary may reimburse a veteran described in subsection (b) for expenses resulting from emergency treatment furnished to the veteran in a non-Department facility for which the veteran remains personally liable.

''(2) In any case in which reimbursement is authorized under subsection (a)(1), the Secretary, in the Secretary's discretion, may, in lieu of reimbursing the veteran, make payment—

''(A) to a hospital or other health care provider that furnished the treatment; or

''(B) to the person or organization that paid for such treatment on behalf of the veteran.

''(b) A veteran referred to in subsection (a) is an individual who—

''(1) is enrolled in the health care system established under section 1705(a) of this title;

''(2) received care under this chapter during the 24-month period preceding the furnishing of such emergency treatment;

''(3) is entitled to care or services under a health-plan contract that partially reimburses the cost of the veteran's emergency treatment;

''(4) is financially liable to the provider of emergency care treatment for costs not covered by the veteran's health-plan contract, including copayments and deductibles; and

''(5) is not eligible for reimbursement for medical care or services under section 1725 or 1728 of this title.

''(c)(1) Any amount paid by the Secretary under subsection (a) shall exclude the

amount of any payment the veteran would have been required to make to the United States under this chapter if the veteran had received the emergency treatment from the Department.

''(2) The Secretary may not provide reimbursement under this section with respect to any item or service—

''(A) provided or for which payment has been made, or can reasonably be expected to be made, under the veteran's health-plan contract; or

''(B) for which payment has been made or can reasonably be expected to be made by a third party.

''(3)(A) Payment by the Secretary under this section on behalf of a veteran to a provider of emergency treatment shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish any liability on the part of the veteran for that treatment.

''(B) The absence of a contract or agreement between the Secretary and the provider, any provision of a contract or agreement, or an assignment to the contrary shall not operate to modify, limit, or negate the requirement under subparagraph (A).

''(4) In accordance with regulations prescribed by the Secretary, the Secretary shall—

''(A) establish criteria for determining the amount of reimbursement (which may include a maximum amount) payable under this section; and

''(B) delineate the circumstances under which such payment may be made, including requirements for requesting reimbursement.

''(d)(1) In accordance with regulations prescribed by the Secretary, the United States shall have the independent right to recover any amount paid under this section if, and to the extent that, a third party subsequently makes a payment for the same emergency treatment.

''(2) Any amount paid by the United States to the veteran, the veteran's personal representative, successor, dependents, or survivors, or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.

''(3) Any amount paid by the United States to the provider that furnished the veteran's emergency treatment shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.

''(4) The veteran or the veteran's personal representative, successor, dependents, or survivors shall—

''(A) ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran;

''(B) immediately forward all documents relating to a payment described in subparagraph (A);

''(C) cooperate with the Secretary in an investigation of a payment described in subparagraph (A); and

''(D) assist the Secretary in enforcing the United States right to recover any payment made under subsection (c)(3).

''(e) The Secretary may waive recovery of a payment made to a veteran under this section that is otherwise required under subsection (d)(1) if the Secretary determines that such waiver would be in the best interest of the United States, as defined by regulations prescribed by the Secretary.

''(f) For purposes of this section—

''(1) the term 'health-plan contract' includes—

''(A) an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement, under which health services for individuals are provided or the expenses of such services are paid;

''(B) an insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of that Act (42 U.S.C. 1395j);

''(C) a State plan for medical assistance approved under title XIX of such Act (42 U.S.C. 1396 et seq.); and

''(D) a workers' compensation law or plan described in section 1729(A)(2)(B) of this title;

''(2) the term 'third party' means—

''(A) a Federal entity;

''(B) a State or political subdivision of a State;

''(C) an employer or an employer's insurance carrier; and

''(D) a person or entity obligated to provide, or pay the expenses of, such emergency treatment; and

''(3) the term 'emergency treatment' has the meaning given such term in section 1725 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1725 the following:

''1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable.''.

**SEC. 18. CONVEYANCE OF FEDERAL LAND IN EXCHANGE FOR FAIR MARKET VALUE CONSIDERATION.**

(a) DEFINITIONS.—In this section:

(1) CITY.—The term ''City'' means the city of Fort Thomas, Kentucky.

(2) FAIR MARKET VALUE CONSIDERATION.—The term ''fair market value consideration'' means the monetary value of the Federal land as of the date of conveyance under section 2, as determined by the Secretary.

(3) FEDERAL LAND.—The term ''Federal land'' means an approximately 11.75 acre parcel of federally-owned property, including the 15 structures located on such property, which is managed by the Department of Veterans Affairs and located in the northeastern portion of Tower Park in the City.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Veterans Affairs.

(b) IN GENERAL.—Subject to valid existing rights, easements, and rights-of-way, the Secretary may convey all right, title, and interest of the United States in and to the Federal land to the City in exchange for fair market value consideration.

(c) RELEASE FROM LIABILITY.—Effective on the date of conveyance to the City of the parcel of Federal land under subsection (b), the United States shall not be liable for damages arising out of any act, omission, or occurrence relating to the Federal land and facilities conveyed, but shall continue to be liable for damages caused by acts of negligence committed by the United States or by any employee or agent of the United States before the date of conveyance, consistent with chapter 171 of title 28, United States Code.

(d) ADMINISTRATIVE COSTS.—All administrative costs relating to the conveyance of the Federal land under subsection (b) shall be paid by the City to the United States.

**SEC. 19. TECHNICAL AND CLERICAL AMENDMENTS.**

(a) TITLE 38, UNITED STATES CODE.—Title 38, United States Code, is amended as follows:

(1) TYPOGRAPHICAL ERROR.—Section 1117(h)(1) is amended by striking ''nothwithstanding'' and inserting ''notwithstanding''.

(2) INSERTION OF MISSING WORD.—Section 1513(a) is amended by inserting ''section'' after ''prescribed by''.

(3) CITATION CORRECTION.—Section 1718(c)(2) is amended by inserting ''of 1938'' after ''Act''.

(4) CITATION CORRECTION.—Section 1785(b)(1) is amended by striking ''Robert B.'' and inserting ''Robert T.''.

(5) PUNCTUATION CORRECTION.—Section 2002(1) is amended by inserting a closing parenthesis before the period at the end.

(6) PUNCTUATION CORRECTION.—Section 2011(a)(1)(C) is amended by inserting a period at the end.

(7) CROSS REFERENCE CORRECTION.—Section 2041(a)(3)(A)(i) is amended by striking ''under this chapter'' and inserting ''established under section 3722 of this title''.

(8) DELETION OF EXTRA WORDS.—Section 3012(a)(1)(C)(ii) is amended by striking ''on or''.

(9) CROSS REFERENCE CORRECTION.—Section 3017(b)(1)(D) is amended by striking ''3011(c)'' and inserting ''3011(e)''.

(10) STYLISTIC AMENDMENTS.—Section 3018A is amended—

(A) in subsections (b) and (c), by striking ''of this section'' each place it appears;

(B) in subsections (a)(4), (a)(5), (d)(1), and (d)(3) by striking ''of this subsection'' each place it appears; and

(C) in subsection (d)(3), by striking ''of this chapter'' and inserting ''of this title''.

(11) CROSS REFERENCE CORRECTION.—Section 3117(b)(1) is amended—

(A) by striking ''section 8'' and inserting ''section 4(b)(1)''; and

(B) by striking ''633(b)'' and inserting ''633(b)(1)''.

(12) INSERTION OF MISSING WORD.—Section 3511(a)(1) is amended by inserting ''sections'' after ''under both''.

(13) SUBSECTION HEADINGS.—

(A) Sections 3461, 3462, 3481, 3565, 3680, and 3690 are each amended by revising each subsection heading for a subsection therein (appearing as a centered heading immediately before the text of the subsection) so that such heading appears immediately after the subsection designation and is set forth in capitals-and-small-capitals typeface, followed by a period and a one-em dash.

(B) Section 3461(c) is amended by inserting after the subsection designation the following: ''DURATION OF ENTITLEMENT.—''.

(C) Section 3462 is amended—

(i) in subsection (d), by inserting after the subsection designation the following: ''PRISONERS OF WAR.—''; and

(ii) in subsection (e), by inserting after the subsection designation the following: ''TERMINATION OF ASSISTANCE.—''.

(14) CROSS REFERENCE CORRECTION.—Section 3732(c)(10)(D) is amended by striking ''clause (B) of paragraphs (5), (6), (7), and (8) of this subsection'' and inserting ''paragraphs (5)(B), (6), (7)(B) , and (8)(B)''.

(15) DATE OF ENACTMENT REFERENCE.—Section 3733(a)(7) is amended by striking ''the date of the enactment of the Veterans' Benefits Act of 2003'' and inserting ''December 16, 2003''.

(16) REPEAL OF OBSOLETE PROVISIONS.—Section 4102A(c)(7) is amended—

(A) by striking ''With respect to program years beginning during or after fiscal year 2004, one percent of'' and inserting ''Of''; and

(B) by striking ''for the program year'' and inserting ''for any program year, one percent''.

(17) REPEAL OF OBSOLETE PROVISIONS.—Section 4105(b) is amended—

(A) by striking ''shall provide,'' and all that follows through ''Affairs with'' and inserting ''shall, on the 15th day of each month, provide the Secretary and the Secretary of Veterans Affairs with updated information regarding''; and

(B) by striking ''and shall'' and all that follows through ''regarding the list''.

(18) CITATION CORRECTION.—Section 4110B is amended—

(A) by striking ''this Act'' and inserting ''the Workforce Investment Act of 1998''; and

(B) by striking ''the Workforce Investment Act of 1998'' and inserting ''that Act (29 U.S.C. 2822(b))''.

(19) CROSS-REFERENCE CORRECTION.—Section 4331(b)(2)(C) is amended by striking ''section 2303(a)(2)(C)(ii)'' and inserting ''section 2302(a)(2)(C)(ii)''

(20) CAPITALIZATION CORRECTION.—Section 7253(d)(5) is amended by striking ''court'' and inserting ''Court''.

(21) CITATION CORRECTION.—Section 8111(b)(1) is amended by striking ''into the strategic'' and all that follows through ''and Results Act'' and inserting ''into the strategic plan of each Department under section 306 of title 5 and the performance plan of each Department under section 1115 of title 31''.

(22) REPEAL OF OBSOLETE PROVISIONS.—Section 8111 is amended further—

(A) in subsection (d)—

(i) in paragraph (2), by striking ''effective October 1, 2003,''; and

(ii) in paragraph (3)(A), by striking the last sentence; and

(B) in subsection (e)(2)—

(i) in the second sentence, by striking ''shall be implemented no later than October 1, 2003, and''; and

(ii) in the third sentence, by striking '', following implementation of the schedule,''.

(23) CITATION CORRECTION.—Section 8111A(a)(2)(B)(i) is amended by striking ''Robert B.'' and inserting ''Robert T.''.

(b) PUBLIC LAW 107–296.—

(1) IN GENERAL.—Section 1704(d) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2315) is amended—

(A) by striking ''101(25)(d)'' and inserting ''101(25)(D)''; and

(B) by striking ''3011(a)(1)(A)(ii)(II)'' and inserting ''3011(a)(1)(A)(ii)(III)''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall be effective as of November 25, 2002.

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**SA 2695.** Mr. FRIST (for Mr. STEVENS) proposed an amendment to the bill H.R. 1400, to amend title 18, United States Code, to provide penalties for aiming laser pointers at airplanes, and for other purposes; as follows:

**SECTION 1. PROHIBITION AGAINST INTERFERING WITH FLIGHT CREWS THROUGH USE OF LASER POINTERS OR SIMILAR DEVICES.**

(a) IN GENERAL.—Chapter 465 of title 49, United States Code, is amended by adding at the end the following:

**''§ 46508. Interference with flight crew vision**

''(a) IN GENERAL.—An individual who interferes with, or attempts to interfere with, the ability of the flight crew of an aircraft in flight to see, or otherwise to impair the safe operation of an aircraft in flight, by illuminating the aircraft with a laser pointer or similar device shall be fined under title 18, imprisoned for not more than 5 years, or both.

''(b) EXCEPTIONS.—Subsection (a) does not apply to the illumination of aircraft by laser or other devices by—

''(1) an authorized individual in the conduct of research and development or flight test operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other person authorized by the Federal Aviation Administration to conduct such research and development or flight test operations;

''(2) members or elements of the Department of Defense acting in an official capacity for the purpose of research, development, operations, testing or training; or

''(3) by an individual using a laser emergency signaling device to send an emergency distress signal.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 465 of title 49, United States Code, is amended by adding at the end the following:

''46508. Interference with flight crew vision''.

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## SENATE ACCOMPLISHMENTS IN 2005

Mr. FRIST. Mr. President, we have a lot to do in wrapup tonight. As we get those papers ready and bring the year to a close, I want to look back over what we have been able to accomplish and then look ahead at what we can expect.

In a letter to John Adams in September 1817, Thomas Jefferson, our third President, wrote:

> A morsel of genuine history is a thing so rare as to be always valuable.

This past year has presented far more than a morsel. We have been witness to an abundance of extraordinary historic milestones, from the Iraqi elections and Lebanon's cedar revolution, the selection of a new Pope in Rome, and a new Chief Justice to lead the Supreme Court to the outpouring of generosity for the American people, first for the tsunami survivors, and then to their fellow citizens on the gulf coast.

Mr. President, 2005 has been a year of outsize events.

I commend to my colleagues an article that appeared in Sunday's Washington Post. It was on the continuing success of the Army in reenlisting our GIs. It appeared on A–27 entitled ''GIs in Iraq Choosing to Re-up.''

Across Iraq, U.S. soldiers on the front lines are reenlisting by the thousands. Since 2001, the Army has surpassed its retention targets by wider and wider margins each year. Conjuring up vivid scenes of daring and service, the Post reports that:

> On palace rooftops and pockmarked streets, GIs are reenlisting in rituals that range from dramatic to harrowing. Soldiers have taken the oath in gaudy former residences of Saddam Hussein and in the spider hole near Tikrit where the gray-bearded fugitive was captured in December of 2003 . . .
>
> Despite the risks and long months away from home, many soldiers . . . say serving in Iraq gives them a powerful sense of purpose.

So during this holiday season, I ask every American to offer their prayers, to offer their thanks to these brave young men and women who are risking their lives in far away lands to protect us and to provide us security.

I am gratified by the passage of the Defense appropriations bill tonight. This important legislation helps ensure that our armed services will receive the resources and authorities they need to protect America. From delivering advanced technologies to improving personnel protection, this bill delivers crucial support for our courageous men and women in uniform.

While our troops are protecting us abroad, the PATRIOT Act is protecting us here at home. Tonight we passed a 6-month extension to this critical legislation. By unanimously and in a bipartisan way agreeing to a 6-month extension, the Senate reaffirmed that the PATRIOT Act is one of our most important tools in the war on terror both now and into the future.

Yes, we need to improve that act and, yes, no longer can we tolerate obstruction to that improvement of the act, but in a bipartisan way we came together tonight to say that despite a lot of passions and statements that we could rise above it, put forth a 6-month extension, and then hopefully be able to address and improve the PATRIOT Act.

It has been an intense and productive year for the Senate. We were able to meet many of our goals to deliver meaningful solutions to the needs, wants, and desires of the American people. Strength and security throughout were our guiding principles. We rolled up our shirt sleeves and tackled a number of fundamental structural issues that were driving up gas prices, that were inhibiting and constricting innovation, and that were threatening America's security.

To strengthen America's economic security, we passed a sweeping deficit reduction bill today that for the first time in 8 years cuts the growth of mandatory spending. This was a huge victory for the American people. It was a huge victory for fiscal responsibility. It was a victory for the American taxpayer. It shows that we are serious as a body about fiscal restraint, about cutting out wasteful Washington spending. Because of these critical reforms, America will be in a stronger position to meet our obligations, especially to the baby boomers who, as we all know, are just beginning to retire, especially to that doubling of the seniors in our population today, especially to the workforce who will be supporting those seniors in the years to come.

This year, we also passed a tax cut extension. We also passed an energy bill, a major highway bill. We addressed free trade through the Central American Free Trade Act. We addressed pensions. Just today, we passed SMART grants, which actually give up to $8,000 over 2 years to disadvantaged or low-income students, to Pell-income students, to encourage them to major in math, science, and engineering, those fields which we know are important to job creation in the future.

By facing these issues head on, by responding to them, by legislating, we are making America less dependent on foreign oil, more prepared to compete with India and China in that global marketplace. We helped rebuild that infrastructure to support and promote our economic growth.

We also addressed a problem that has been hanging over the small business community and the courts for years—the litigation lottery lawsuit abuse. We all know that frivolous litigation has been driving up health care costs. It

has been driving up consumer prices for everything from toothpaste to blue jeans. It has been clogging our courts. It has been making our health care more expensive, and that drives people to the ranks of the uninsured. It generally wastes our taxpayer dollars, taxpayer dollars that can be spent more productively.

For years, Republicans have fought for reform, have talked reform, but in this Congress we have delivered on litigation reform, on lawsuit abuse reform. We passed class action reform. We passed bankruptcy reform. We passed gun manufacturing liability reform. That is three reforms in terms of liability. Tonight, just a few hours ago, we passed very targeted vaccine manufacturing protections in emergency situations to make America safer, to help rebuild that manufacturing capacity which has been decimated over the past 20 years. This brings fairness to our system. This brings rationality to the system. This slows down the litigation lottery that injects inequities into our system. As a result, appropriate compensation will go to the people who really need it. Those resources which are wasted and which are taken out of the system are directed to those people who do deserve appropriately to be compensated. These are the economic issues.

At the same time we were addressing those economic issues, we also continued to focus on securing our homeland, focusing on our homeland security, strengthening our national security.

Earlier this year, I had the opportunity to travel in part as a Senator but in larger part probably as a physician to Sri Lanka, where I had the chance to witness the devastation that occurred as a result of that natural tsunami disaster. In the wake of that particular disaster, in this body we passed a generous relief package that helped the victims recover and rebuild. This critical help paid immediate dividends in lives saved and—we cannot dismiss this—it helped improve the way others around the world look at us. They recognize America's good will. They recognize America's compassion. I say this because I think it particularly is important among Muslims in Southeast Asia.

Likewise, our outpouring of aid and assistance to Pakistan following their earthquake disaster has significantly improved our standing in that country.

Disaster, as we all know, unfortunately, was a dominant thing throughout 2005, and here at home we were hit through Katrina and Rita by the worst natural disaster in the history of this country. Hundreds of thousands of residents across Alabama, Louisiana, and Mississippi were flooded from their homes. Katrina devastated 90,000 square miles. That is an area larger than the United Kingdom.

A few hours ago, on the Senate floor, Senator STEVENS was recounting his experiences having spent several days along that gulf coast. About 3 to 4 days after the levees broke in New Orleans, I, too, had the opportunity to be in the airport as patients were being brought in and people were being evacuated out of New Orleans. I had the opportunity to talk to people on stretchers who 3 days before had homes that they had been in for 30, 40, 50 years. Those homes were totally washed away and destroyed with all of their belongings. Whole towns were washed away.

We traveled also on the first trip, as well as the second trip, to Alabama and to Mississippi, along that entire gulf coast. One can see the utter catastrophe of that coast, inland for miles. The Senate immediately set to work providing aid, relief, and support, and that continued tonight.

We passed numerous measures to help people get up off the ground and to get their boots back on the ground and be able to reestablish some element of normalcy and also to support the rebuilding efforts that have begun, that will result in renewal we all know will continue long into the future.

Tonight, as part of the Defense appropriations bill, we passed $29 billion in Hurricanes Katrina and Rita relief. We will continue to work hard to help the citizens of the gulf coast rebuild, renew, and restore their communities in the days ahead, in the weeks and months ahead, and, indeed, in the years ahead. The American people stand firmly behind their neighbors in the gulf region.

We also took action tonight to prepare for another potential disaster that is waiting to happen, and that is the threat of avian flu. We do not know if avian flu is going to become transmissible from one person to another person to another, but what we do know is that it is a novel virus. It is a new virus. It is very similar to that virus of 1918 which we know killed about 50,000 people—actually killed about 30 million to 40 million people worldwide and half a million people in this country.

We know that novel virus we do not have any immunity to. We don't have any natural immunity to it. We know with that novel virus today, that people who have been infected have a 50-percent mortality rate. One out of every two people we know were infected with that virus died. We know that virus has jumped to other species. It jumped from avian or birds that it starts in, to cats, and from cats we know that it has jumped to humans. We know that 5 million—20 million birds died, and 100 million, now 200 million birds died, and it started in southeast Asia and is now moving across to eastern Europe. We do not know if it is going to become a pandemic, but what we do know is we are unprepared. We know it is fast moving.

The Congressional Budget Office study the other day said if that virus does become transmissible, and if it has the same fatality rate and prevalence rate as that virus in 1918, the so-called Spanish flu, the economic impact on this country could be as high as $675 billion.

The good news is we know if we become prepared, we can reduce that markedly, and we can save lives. But we are unprepared today. How do we respond? Again, about 2 hours ago we put in money, additional resources, and we put in appropriate targeted liability protections to help build our manufacturing base, and we added an element of compensation in the event that somebody was inadvertently hurt in some way by a vaccine or a countermeasure that was necessary in emergency situations, they could seek and receive compensation.

We are going to be better prepared as a product of this. Whether it is in the next 5 weeks, 5 months, or 5 years, we will be able to look our constituents in the eye and tell them that we did the right thing on December 21, 2005, and that help, indeed, is on the way.

Our Nation is a large nation. It is a diverse and a vibrant nation. To meet all of these challenges before us, we need a sound government, a strong government, an efficient government that meets its basic obligations. Here, too, we have acted this year. We made progress. We need a government that is smart, that is efficient, that is effective; a government that works for the people and respects the taxpayers' hard-earned dollar. To that end, this year we passed a budget resolution. What is remarkable—but I am sure doesn't sound remarkable to people across America who are viewing tonight—is the fact that we passed all 12 appropriations bills, our spending bills, one by one, individually, across the floor of the Senate.

It is almost embarrassing that we have to say that is a great achievement, but indeed in this body it is a tremendous achievement that has not been achieved in years. We passed the Health and Human Services bill a couple of hours ago, the 12th of those bills. These are the bills that ensure that Government is carrying out its most basic function: to protect and serve the American people and to do so in a fiscally responsible way.

This year we were also able to overcome partisan obstruction, which was very frustrating, which continued for about 2½, almost 3 years. We were able to overcome the judicial obstruction, this partisan obstruction, and indeed successfully confirm eight Federal judges who had previously been obstructed, who had previously been filibustered. These judges now are serving America proudly. They allow our courts to be able to function at full capacity and thus provide the justice that had been lacking because of not being able to fill those seats.

Of course, this fall we had the privilege of confirming a new Chief Justice to the Supreme Court; a man all of us have gotten to know, the eminently qualified and highly respected Justice John Roberts.

All of this is just a partial accounting of the work that we were able to do

this year to strengthen America, to move us forward, to strengthen our economic security, to strengthen our national security. In the new year, we are going to have a lot of challenges. We have a lot to accomplish over the next year. But I am absolutely confident that by keeping our eye on the ball, by staying focused, by working together in a bipartisan way we will be able to continue to cut bureaucratic redtape, to have more efficient Government, to demonstrate more fiscal restraint, to lower Government spending, to support our troops in the field, and to promote policies that will make America safer and more prosperous and healthier and stronger.

I extend my warm wishes to my colleagues for a joyous holiday season. The holidays also are an opportunity to gather with loved ones, to cherish achievements, and to recommit ourselves to the challenges that lay ahead. May we all find strength and renewal in this season, and may we all allow the good will which warms our homes during the holidays to be shared with others—our families, our friends, our neighbors—throughout the year to come.

To our colleagues, to our staff, to the pages who are here tonight, the colleagues who hopefully are at home and in bed now, to the press corps who has been so actively covering us up until about 15 or 20 minutes ago and are probably writing their stories right now, I wish you all happy holidays, and to all a very Merry Fristmas.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

## STATUS QUO OF NOMINATIONS

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that all nominations received by the Senate during the first session of the 109th Congress remain in status quo following the sine die adjournment of the first session under the provisions of rule XXXI, paragraph 6, of the Standing Rules of the Senate, with the following exceptions: Calendar No. 436, Brett Cavanaugh, PN203, and a list of nominations from the Armed Services that is at the desk.

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

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar, Calendar Nos. 149, 219, 464, 483, 486, 487, 488, 489, and all nominations on the Secretary's desk; provided further the Commerce Committee be discharged further from consideration of the following nominations, and they be considered en bloc: PN1147 and PN1146; I further ask unanimous consent the nominations be confirmed en bloc, the motions to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

IN THE ARMY

The following named officers for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624.

*To be brigadier general*

Col. Donald M. Bradshaw, 0000

DEPARTMENT OF THE INTERIOR

R. Thomas Weimer, of Colorado, to be an Assistant Secretary of the Interior.

DEPARTMENT OF HOMELAND SECURITY

Emilio T. Gonzalez, of Florida, to be Director of the Bureau of Citizenship and Immigration Services, Department of Homeland Security.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Vincent J. Ventimiglia, Jr., of Maryland, to be an Assistant Secretary of Health and Human Services.

IN THE AIR FORCE

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

*To be major general*

Brigadier General Philip M. Breedlove, 0000

IN THE ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under the title 10, U.S.C., section 601:

*To be lieutenant general*

Maj. Gen. Gary D. Speer, 0000

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

*To be lieutenant general*

Lt. Gen. Charles C. Campbell, 0000

IN THE MARINE CORPS

The following named officer for appointment in the United States Marine Corps Reserve to the grade indicated under title 10, U.S.C., section 12203:

*To be major general*

Brig. Gen. Andrew B. Davis, 0000

NOMINATIONS PLACED ON THE SECRETARY'S DESK

IN THE AIR FORCE

PN785 AIR FORCE nominations (177) beginning JOLENE A. * AINSWORTH, and ending DAVID C. * ZIMMERMAN, which nominations were received by the Senate and appeared in the Congressional Record of July 28, 2005.

PN994 AIR FORCE nominations (61) beginning CRAIG L. ADAMS, and ending MATTHEW C. WYATT, which nominations were received by the Senate and appeared in the Congressional Record of October 17, 2005.

PN996 AIR FORCE nominations (1235) beginning JAY O. AANRUD, and ending SCOTT C. ZIPPWALD, which nominations were received by the Senate and appeared in the Congressional Record of October 17, 2005.

PN1123 AIR FORCE nomination of Martin E. Keillor, which was received by the Senate and appeared in the Congressional Record of December 14, 2005.

PN1124 AIR FORCE nominations (3) beginning ROBERT W. DESVERREAUZ, and ending CHETAN U. KHAROD, which nominations were received by the Senate and appeared in the Congressional Record of December 14, 2005.

PN1125 AIR FORCE nomination of Julie S. Miller, which was received by the Senate and appeared in the Congressional Record of December 14, 2005.

PN1126 AIR FORCE nomination of Kara A. Gormont, which was received by the Senate and appeared in the Congressional Record of December 14, 2005.

IN THE ARMY

PN1103–1 ARMY nominations (527) beginning DEIBY ACEVEDO, and ending DAVID R. ZYSK, which nominations were received by the Senate and appeared in the Congressional Record of December 13, 2005.

PN1104 ARMY nominations (478) beginning HOLTORF R. ALONSO, and ending RICHARD M. ZYGADLO, which nominations were received by the Senate and appeared in the Congressional Record of December 13, 2005.

PN1105 ARMY nominations (17) beginning THOMAS E. AYRES, and ending PETER C. ZOLPER, which nominations were received by the Senate and appeared in the Congressional Record of December 13, 2005.

PN1127 ARMY nomination of Cindy R. Jebb, which was received by the Senate and appeared in the Congressional Record of December 14, 2005.

PN1128 ARMY nomination of Richard L. Chavez, which was received by the Senate and appeared in the Congressional Record of December 14, 2005.

PN1129 ARMY nominations (2) beginning SAMUEL CASSCELLS, and ending SLOBODAN JAZAREVIC, which nominations were received by the Senate and appeared in the Congressional Record of December 14, 2005.

PN1130 ARMY nominations (5) beginning JOSEPH J. IMPALLARIA, and ending ARTHUR E. LEES, which nominations were received by the Senate and appeared in the Congressional Record of December 14, 2005.

IN THE MARINE CORPS

PN1131 MARINE CORPS nomination of Michelle A. Rakers, which was received by the Senate and appeared in the Congressional Record of December 14, 2005.

IN THE NAVY

PN1110 NAVY nominations (42) beginning TONY C. BAKER, and ending JAMES J. VOPELIUS, which nominations were received by the Senate and appeared in the Congressional Record of December 13, 2005.

PN1132 NAVY nomination of Lloyd G. Lecain, which was received by the Senate and appeared in the Congressional Record of December 14, 2005.

IN THE COAST GUARD IN THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 211:

*To be lieutenant commander*

Connie M. Rooke, 0000

*To be lieutenant*

Joseph T. Benin, 0000

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

## UNCLEARED NOMINATIONS

Mr. FRIST. Mr. President, there are several nominations that had been cleared for some length of time on our side of the aisle, and I was disappointed we were not able to clear them on the other side. The Intelligence Committee reported the General Counsel of the Office of the Director of National Intelligence on July 26, and that is being held up. We have the Assistant Secretary of Defense and an Under Secretary of Defense that we have been unable to reach consent on. I hope my colleagues on the other side of the aisle would allow these important defense and intelligence positions to go forward, and we will try again when we return.

## AUTHORITY TO MAKE APPOINTMENTS

Mr. FRIST. I ask unanimous consent that notwithstanding the upcoming recess or adjournment of the Senate, the President of the Senate, the President pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law by concurrent action of the two Houses or by order of the Senate.

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

## SIGNING AUTHORITY

Mr. FRIST. I ask unanimous consent that during adjournment the Senate majority leader and junior Senator from Virginia be authorized to sign duly enrolled bills or joint resolutions.

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

## ORDER FOR NOMINATIONS TO REMAIN IN STATUS QUO

Mr. FRIST. As in executive session, I ask unanimous consent all nominations received by the Senate during the first session of the 109th Congress remain in status quo following the sine die adjournment of the first session under the provisions of rule XXXI, paragraph 6, of the Standing Rules of the Senate, with the following exception: Calendar No. 436, Brett Kavanaugh, PN203, and a list of nominations from the armed services that are at the desk.

The PRESIDING OFFICER. Without objection it is so ordered.

## GLOBAL PATHOGEN SURVEILLANCE AND RESPONSE

Mr. FRIST. I ask unanimous consent the Senate proceed to the immediate consideration of S. 2170, introduced earlier today.

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

The legislative clerk read as follows:

A bill (S. 2170) to provide for global pathogen surveillance and response.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

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

The bill (S. 2170) was read the third time and passed, as follows:

S. 2170

*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 ''Global Pathogen Surveillance Act of 2005''.

**SEC. 2. FINDINGS; PURPOSE.**

(a) FINDINGS.—Congress makes the following findings:

(1) The frequency of the occurrence of biological events that could threaten the national security of the United States has increased and is likely increasing. The threat to the United States from such events includes threats from diseases that infect humans, animals, or plants regardless of if such diseases are introduced naturally, accidentally, or intentionally.

(2) The United States lacks an effective and real-time system to detect, identify, contain, and respond to global threats and also lacks an effective mechanism to disseminate information to the national response community if such threats arise.

(3) Bioterrorism poses a grave national security threat to the United States. The insidious nature of a bioterrorist attack, the likelihood that the recognition of such an attack would be delayed, and the underpreparedness of the domestic public health infrastructure to respond to such an attack could result in catastrophic consequences following a biological weapons attack against the United States.

(4) The ability to recognize that a country or organization is carrying out a covert biological weapons programs is dependent on a number of indications and warnings. A critical component of this recognition is the timely detection of sentinel events such as laboratory accidents and community-level outbreaks that could be the earliest indication of an emerging bioterrorist program in a foreign country. Early detection of such events may enable earlier counterproliferation intervention.

(5) A contagious pathogen engineered as a biological weapon and developed, tested, produced, or released in a foreign country could quickly spread to the United States. Considering the realities of international travel, trade, and migration patterns, a dangerous pathogen appearing naturally, accidentally, or intentionally anywhere in the world can spread to the United States in a matter of days, before any effective quarantine or isolation measures could be implemented.

(6) To combat bioterrorism effectively and ensure that the United States is fully prepared to prevent, recognize, and contain a biological weapons attack, or emerging infectious disease, measures to strengthen the domestic public health infrastructure and improve domestic event detection, surveillance, and response, while absolutely essential, are not sufficient.

(7) The United States should enhance cooperation with the World Health Organization, regional international health organizations, and individual countries, including data sharing with appropriate agencies and departments of the United States, to help detect and quickly contain infectious disease outbreaks or a bioterrorism agent before such a disease or agent is spread.

(8) The World Health Organization has done an impressive job in monitoring infectious disease outbreaks around the world, particularly with the establishment in April 2000 of the Global Outbreak Alert and Response Network.

(9) The capabilities of the World Health Organization depend on the quality of the data and information the Organization receives from the countries that are members of the Organization and is further limited by the narrow list of diseases (such as plague, cholera, and yellow fever) on which such surveillance and monitoring is based and by the consensus process used by the Organization to add new diseases to the list. Developing countries, in particular, often are unable to devote the necessary resources to build and maintain public health infrastructures.

(10) In particular, developing countries could benefit from—

(A) better trained public health professionals and epidemiologists to recognize disease patterns;

(B) appropriate laboratory equipment for diagnosis of pathogens;

(C) disease reporting systems that—

(i) are based on disease and syndrome surveillance; and

(ii) could enable an effective response to a biological event to begin at the earliest possible opportunity;

(D) a narrowing of the existing technology gap in disease and syndrome surveillance capabilities, based on reported symptoms, and real-time information dissemination to public health officials; and

(E) appropriate communications equipment and information technology to efficiently transmit information and data within national, international regional, and international health networks, including inexpensive, Internet-based Geographic Information Systems (GIS) and relevant telephone-based systems for early recognition and diagnosis of diseases.

(11) An effective international capability to detect, monitor, and quickly diagnose infectious disease outbreaks will offer dividends not only in the event of biological weapons development, testing, production, and attack, but also in the more likely cases of naturally occurring infectious disease outbreaks that could threaten the United States. Furthermore, a robust surveillance system will serve to deter, prevent, or contain terrorist use of biological weapons, mitigating the intended effects of such malevolent uses.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To provide the United States with an effective and real-time system to detect biological threats that—

(A) utilizes classified and unclassified information to detect such threats; and

(B) may be utilized by the human or the agricultural domestic disease response community.

(2) To enhance the capability of the international community, through the World Health Organization and individual countries, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

(3) To enhance the training of public health professionals and epidemiologists from eligible developing countries in advanced Internet-based disease and syndrome surveillance systems, in addition to traditional epidemiology methods, so that such professionals and epidemiologists may better detect, diagnose, and contain infectious disease outbreaks, especially such outbreaks

caused by the pathogens that may be likely to be used in a biological weapons attack.

(4) To provide assistance to developing countries to purchase appropriate communications equipment and information technology to detect, analyze, and report biological threats, including—

(A) relevant computer equipment, Internet connectivity mechanisms, and telephone-based applications to effectively gather, analyze, and transmit public health information for infectious disease surveillance and diagnosis; and

(B) appropriate computer equipment and Internet connectivity mechanisms—

(i) to facilitate the exchange of Geographic Information Systems-based disease and syndrome surveillance information; and

(ii) to effectively gather, analyze, and transmit public health information for infectious disease surveillance and diagnosis.

(5) To make available greater numbers of public health professionals who are employed by the Government of the United States to international regional and international health organizations, international regional and international health networks, and United States diplomatic missions, as appropriate.

(6) To expand the training and outreach activities of United States laboratories located in foreign countries, including the Centers for Disease Control and Prevention or Department of Defense laboratories, to enhance the public health capabilities of developing countries.

(7) To provide appropriate technical assistance to existing international regional and international health networks and, as appropriate, seed money for new international regional and international networks.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) ELIGIBLE DEVELOPING COUNTRY.—The term ''eligible developing country'' means any developing country that—

(A) has agreed to the objective of fully complying with requirements of the World Health Organization on reporting public health information on outbreaks of infectious diseases;

(B) has not been determined by the Secretary, for purposes of section 40 of the Arms Export Control Act (22 U.S.C. 2780), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 6(j) of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.), to have repeatedly provided support for acts of international terrorism, unless the Secretary exercises a waiver certifying that it is in the national interest of the United States to provide assistance under the provisions of this Act; and

(C) is a party to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at Washington, London, and Moscow April 10, 1972 (26 UST 583).

(2) ELIGIBLE NATIONAL.—The term ''eligible national'' means any citizen or national of an eligible developing country who—

(A) does not have a criminal background;

(B) is not on any immigration or other United States watch list; and

(C) is not affiliated with any foreign terrorist organization.

(3) INTERNATIONAL HEALTH ORGANIZATION.—The term ''international health organization'' includes the World Health Organization, regional offices of the World Health Organization, and international health organizations, such as the Pan American Health Organization.

(4) LABORATORY.—The term ''laboratory'' means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other medical examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(5) SECRETARY.—Unless otherwise provided, the term ''Secretary'' means the Secretary of State.

(6) DISEASE AND SYNDROME SURVEILLANCE.—The term ''disease and syndrome surveillance'' means the recording of clinician-reported symptoms (patient complaints) and signs (derived from physical examination and laboratory data) combined with simple geographic locators to track the emergence of a disease in a population.

**SEC. 4. ELIGIBILITY FOR ASSISTANCE.**

(a) IN GENERAL.—Except as provided in subsection (b), assistance may be provided to an eligible developing country under any provision of this Act only if the government of the eligible developing country—

(1) permits personnel from the World Health Organization and the Centers for Disease Control and Prevention to investigate outbreaks of infectious diseases within the borders of such country; and

(2) provides pathogen surveillance data to the appropriate agencies and departments of the United States and to international health organizations.

(b) WAIVER.—The Secretary may waive the prohibition set out in subsection (a) if the Secretary determines that it is in the national interest of the United States to provide such a waiver.

**SEC. 5. RESTRICTION.**

(a) IN GENERAL.—Notwithstanding any other provision of this Act, no foreign national participating in a program authorized under this Act shall have access, during the course of such participation, to a select agent or toxin described in section 73.4 of title 42, Code of Federal Regulations (or any corresponding similar regulation) or an overlap select agent or toxin described in section 73.5 of such title (or any corresponding similar regulation) that may be used as, or in, a biological weapon, except in a supervised and controlled setting.

(b) RELATIONSHIP TO REGULATIONS.—The restriction set out in subsection (a) may not be construed to limit the ability of the Secretary of Health and Human Services to prescribe, through regulation, standards for the handling of a select agent or toxin or an overlap select agent or toxin described in such subsection.

**SEC. 6. FELLOWSHIP PROGRAM.**

(a) ESTABLISHMENT.—There is established a fellowship program under which the Secretary, in consultation with the Secretary of Health and Human Services and subject to the availability of appropriations, shall award fellowships to eligible nationals to pursue public health education or training, as follows:

(1) MASTER OF PUBLIC HEALTH DEGREE.—Graduate courses of study leading to a master of public health degree with a concentration in epidemiology from an institution of higher education in the United States with a Center for Public Health Preparedness, as determined by the Director of the Centers for Disease Control and Prevention.

(2) ADVANCED PUBLIC HEALTH EPIDEMIOLOGY TRAINING.—Advanced public health training in epidemiology for public health professionals from eligible developing countries to be carried out at the Centers for Disease Control and Prevention, an appropriate facility of a State, or an appropriate facility of another agency or department of the United States (other than a facility of the Department of Defense or a national laboratory of the Department of Energy) for a period of not less than 6 months or more than 12 months.

(b) SPECIALIZATION IN BIOTERRORISM.—In addition to the education or training specified in subsection (a), each recipient of a fellowship under this section (in this section referred to as a ''fellow'') may take courses of study at the Centers for Disease Control and Prevention or at an equivalent facility on diagnosis and containment of likely bioterrorism agents.

(c) FELLOWSHIP AGREEMENT.—

(1) IN GENERAL.—A fellow shall enter into an agreement with the Secretary under which the fellow agrees—

(A) to maintain satisfactory academic progress, as determined in accordance with regulations issued by the Secretary and confirmed in regularly scheduled updates to the Secretary from the institution providing the education or training on the progress of the fellow's education or training;

(B) upon completion of such education or training, to return to the fellow's country of nationality or last habitual residence (so long as it is an eligible developing country) and complete at least 4 years of employment in a public health position in the government or a nongovernmental, not-for-profit entity in that country or, with the approval of the Secretary, complete part or all of this requirement through service with an international health organization without geographic restriction; and

(C) that, if the fellow is unable to meet the requirements described in subparagraph (A) or (B), the fellow shall reimburse the United States for the value of the assistance provided to the fellow under the fellowship program, together with interest at a rate that—

(i) is determined in accordance with regulations issued by the Secretary; and

(ii) is not higher than the rate generally applied in connection with other Federal loans.

(2) WAIVERS.—The Secretary may waive the application of subparagraph (B) or (C) of paragraph (1) if the Secretary determines that it is in the national interest of the United States to provide such a waiver.

(d) AGREEMENT.—The Secretary, in consultation with the Secretary of Health and Human Services, is authorized to enter into an agreement with the government of an eligible developing country under which such government agrees—

(1) to establish a procedure for the nomination of eligible nationals for fellowships under this section;

(2) to guarantee that a fellow will be offered a professional public health position within the developing country upon completion of the fellow's studies; and

(3) to submit to the Secretary a certification stating that a fellow has concluded the minimum period of employment in a public health position required by the fellowship agreement, including an explanation of how the requirement was met.

(e) PARTICIPATION OF UNITED STATES CITIZENS.—On a case-by-case basis, the Secretary may provide for the participation of a citizen of the United States in the fellowship program under the provisions of this section if—

(1) the Secretary determines that it is in the national interest of the United States to provide for such participation; and

(2) the citizen of the United States agrees to complete, at the conclusion of such participation, at least 5 years of employment in a public health position in an eligible developing country or at an international health organization.

(f) USE OF EXISTING PROGRAMS.—The Secretary, with the concurrence of the Secretary of Health and Human Services, may

elect to use existing programs of the Department of Health and Human Services to provide the education and training described in subsection (a) if the requirements of subsections (b), (c), and (d) will be substantially met under such existing programs.

**SEC. 7. IN-COUNTRY TRAINING IN LABORATORY TECHNIQUES AND DISEASE AND SYNDROME SURVEILLANCE.**

(a) LABORATORY TECHNIQUES.—

(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health and Human Services and in conjunction with the Director of the Centers for Disease Control and Prevention and the Secretary of Defense, and subject to the availability of appropriations, shall provide assistance for short training courses for eligible nationals who are laboratory technicians or other public health personnel in laboratory techniques relating to the identification, diagnosis, and tracking of pathogens responsible for possible infectious disease outbreaks.

(2) LOCATION.—The training described in paragraph (1) shall be held outside the United States and may be conducted in facilities of the Centers for Disease Control and Prevention located in foreign countries or in Overseas Medical Research Units of the Department of Defense, as appropriate.

(3) COORDINATION WITH EXISTING PROGRAMS.—The Secretary shall coordinate the training described in paragraph (1), where appropriate, with existing programs and activities of international health organizations.

(b) DISEASE AND SYNDROME SURVEILLANCE.—

(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health and Human Services and in conjunction with the Director of the Centers for Disease Control and Prevention and the Secretary of Defense and subject to the availability of appropriations, shall establish and provide assistance for short training courses for eligible nationals who are health care providers or other public health personnel in techniques of disease and syndrome surveillance reporting and rapid analysis of syndrome information using Geographic Information System (GIS) tools.

(2) LOCATION.—The training described in paragraph (1) shall be conducted via the Internet or in appropriate facilities located in a foreign country, as determined by the Secretary.

(3) COORDINATION WITH EXISTING PROGRAMS.—The Secretary shall coordinate the training described in paragraph (1), where appropriate, with existing programs and activities of international regional and international health organizations.

**SEC. 8. ASSISTANCE FOR THE PURCHASE AND MAINTENANCE OF PUBLIC HEALTH LABORATORY EQUIPMENT AND SUPPLIES.**

(a) AUTHORIZATION.—The President is authorized to provide, on such terms and conditions as the President may determine, assistance to eligible developing countries to purchase and maintain the public health laboratory equipment and supplies described in subsection (b).

(b) EQUIPMENT AND SUPPLIES COVERED.—The equipment and supplies described in this subsection are equipment and supplies that are—

(1) appropriate, to the extent possible, for use in the intended geographic area;

(2) necessary to collect, analyze, and identify expeditiously a broad array of pathogens, including mutant strains, which may cause disease outbreaks or may be used in a biological weapon;

(3) compatible with general standards set forth by the World Health Organization and, as appropriate, the Centers for Disease Control and Prevention, to ensure interoperability with international regional and international public health networks; and

(4) not defense articles, defense services, or training, as such terms are defined in the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment or supplies that, if made in the United States, would be subject to the Arms Export Control Act (22 U.S.C. 2751 et seq.) or likely be barred or subject to special conditions under the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.).

(e) PROCUREMENT PREFERENCE.—In the use of grant funds authorized under subsection (a), preference should be given to the purchase of equipment and supplies of United States manufacture. The use of amounts appropriated to carry out this section shall be subject to section 604 of the Foreign Assistance Act of 1961 (22 U.S.C. 2354).

(f) COUNTRY COMMITMENTS.—The assistance provided under this section for equipment and supplies may be provided only if the eligible developing country that receives such equipment and supplies agrees to provide the infrastructure, technical personnel, and other resources required to house, maintain, support, secure, and maximize use of such equipment and supplies.

**SEC. 9. ASSISTANCE FOR IMPROVED COMMUNICATION OF PUBLIC HEALTH INFORMATION.**

(a) ASSISTANCE FOR PURCHASE OF COMMUNICATION EQUIPMENT AND INFORMATION TECHNOLOGY.—The President is authorized to provide, on such terms and conditions as the President may determine, assistance to eligible developing countries to purchase and maintain the communications equipment and information technology described in subsection (b), and the supporting equipment, necessary to effectively collect, analyze, and transmit public health information.

(b) COVERED EQUIPMENT.—The communications equipment and information technology described in this subsection are communications equipment and information technology that—

(1) are suitable for use under the particular conditions of the area of intended use;

(2) meet the standards set forth by the World Health Organization and, as appropriate, the Secretary of Health and Human Services, to ensure interoperability with like equipment of other countries and international organizations; and

(3) are not defense articles, defense services, or training, as those terms are defined in the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of communications equipment or information technology that, if made in the United States, would be subject to the Arms Export Control Act (22 U.S.C. 2751 et seq.) or likely be barred or subject to special conditions under the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.).

(e) PROCUREMENT PREFERENCE.—In the use of grant funds under subsection (a), preference should be given to the purchase of communications equipment and information technology of United States manufacture. The use of amounts appropriated to carry out this section shall be subject to section 604 of the Foreign Assistance Act of 1961 (22 U.S.C. 2354).

(f) ASSISTANCE FOR STANDARDIZATION OF REPORTING.—The President is authorized to provide, on such terms and conditions as the President may determine, technical assistance and grant assistance to international health organizations to facilitate standardization in the reporting of public health information between and among developing countries and international health organizations.

(g) COUNTRY COMMITMENTS.—The assistance provided under this section for communications equipment and information technology may be provided only if the eligible developing country that receives such equipment and technology agrees to provide the infrastructure, technical personnel, and other resources required to house, maintain, support, secure, and maximize use of such equipment and technology.

**SEC. 10. ASSIGNMENT OF PUBLIC HEALTH PERSONNEL TO UNITED STATES MISSIONS AND INTERNATIONAL ORGANIZATIONS.**

(a) IN GENERAL.—Upon the request of the chief of a diplomatic mission of the United States or of the head of an international regional or international health organization, and with the concurrence of the Secretary and of the employee concerned, the head of an agency or department of the United States may assign to the mission or the organization any officer or employee of the agency or department that occupies a public health position within the agency or department for the purpose of enhancing disease and pathogen surveillance efforts in developing countries.

(b) REIMBURSEMENT.—The costs incurred by an agency or department of the United States by reason of the detail of personnel under subsection (a) may be reimbursed to that agency or department out of the applicable appropriations account of the Department of State if the Secretary determines that the agency or department may otherwise be unable to assign such personnel on a non-reimbursable basis.

**SEC. 11. EXPANSION OF CERTAIN UNITED STATES GOVERNMENT LABORATORIES ABROAD.**

(a) IN GENERAL.—Subject to the availability of appropriations, the Director of the Centers for Disease Control and Prevention and the Secretary of Defense shall each—

(1) increase the number of personnel assigned to laboratories of the Centers for Disease Control and Prevention or the Department of Defense, as appropriate, located in eligible developing countries that conduct research and other activities with respect to infectious diseases; and

(2) expand the operations of such laboratories, especially with respect to the implementation of on-site training of foreign nationals and activities affecting the region in which the country is located.

(b) COOPERATION AND COORDINATION BETWEEN LABORATORIES.—Subsection (a) shall be carried out in such a manner as to foster cooperation and avoid duplication between and among laboratories.

(c) RELATION TO CORE MISSIONS AND SECURITY.—The expansion of the operations of the laboratories of the Centers for Disease Control and Prevention or the Department of

Defense located in foreign countries under this section may not—

(1) detract from the established core missions of the laboratories; or

(2) compromise the security of those laboratories, as well as their research, equipment, expertise, and materials.

**SEC. 12. ASSISTANCE FOR INTERNATIONAL HEALTH NETWORKS AND EXPANSION OF FIELD EPIDEMIOLOGY TRAINING PROGRAMS.**

(a) AUTHORITY.—The President is authorized, on such terms and conditions as the President may determine, to provide assistance for the purposes of—

(1) enhancing the surveillance and reporting capabilities for the World Health Organization and existing international regional and international health networks; and

(2) developing new international regional and international health networks.

(b) EXPANSION OF FIELD EPIDEMIOLOGY TRAINING PROGRAMS.—The Secretary of Health and Human Services is authorized to establish new country or regional international Field Epidemiology Training Programs in eligible developing countries.

**SEC. 13. FOREIGN BIOLOGICAL THREAT DETECTION AND WARNING.**

(a) IN GENERAL.—The President shall establish the Office of Foreign Biological Threat Detection and Warning within either the Department of Defense, the Central Intelligence Agency, or the Centers for Disease Control and Prevention with the technical ability to conduct event detection and rapid threat assessment related to biological threats in foreign countries.

(b) PURPOSES.—The purposes of the Office of Foreign Biological Threat Detection and Warning shall be—

(1) to integrate public health, medical, agricultural, societal, and intelligence indications and warnings to identify in advance the emergence of a transnational biological threat;

(2) to provide rapid threat assessment capability to the appropriate agencies or departments of the United States that is not dependent on access to—

(A) a specific biological agent;

(B) the area in which such agent is present; or

(C) information related to the means of introduction of such agent; and

(3) to build the information visibility and decision support activities required for appropriate and timely information distribution and threat response.

(c) TECHNOLOGY.—The Office of Foreign Biological Threat Detection and Warning shall employ technologies similar to, but no less capable than, those used by the Intelligence Technology Innovation Center (ITIC) within the Directorate of Science and Technology of the Central Intelligence Agency to conduct real-time, prospective, automated threat assessments that employ social disruption factors.

(d) EVENT DETECTION DEFINED.—In this section, the term ''event detection'' refers to the real-time and rapid recognition of a possible biological event that has appeared in a community and that could have national security implications, regardless of whether the event is caused by natural, accidental, or intentional means and includes scrutiny of such possible biological event by analysts utilizing classified and unclassified information.

**SEC. 14. REPORTS.**

Not later than 90 days after the date of enactment of this Act, the Secretary, in conjunction with the Secretary of Health and Human Services and the Secretary of Defense, shall submit to Congress a report on the implementation of programs under this Act, including an estimate of the level of funding required to carry out such programs at a sufficient level.

**SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Subject to subsection (c), there is authorized to be appropriated for fiscal year 2006 such sums as may be necessary to carry out this Act.

(b) AVAILABILITY OF FUNDS.—The amount appropriated pursuant to subsection (a) is authorized to remain available until expended.

(c) LIMITATION ON OBLIGATION OF FUNDS.—Not more than 10 percent of the amount appropriated pursuant to subsection (a) may be obligated before the date on which a report is submitted, or required to be submitted, whichever first occurs, under section 14.

## RECOGNIZING THE REPUBLIC OF CROATIA

Mr. FRIST. I ask unanimous consent the Senate now proceed to the consideration of S. Res. 342, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 342) recognizing the Republic of Croatia for its progress in strengthening democratic institutions, respect for human rights, and the rule of law and recommending the integration of Croatia into the North Atlantic Treaty Organization.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The resolution (S. Res. 342) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 342

Whereas the United States recognized the Republic of Croatia on April 7, 1992, acknowledging the decision of the people of Croatia to live in an independent, democratic, and sovereign country;

Whereas since achieving their independence, the people of Croatia have dedicated themselves to building a functioning democratic society, based on the rule of law, respect for human rights, and a free market economy;

Whereas Croatia has made progress in judicial reform and has adopted a judicial reform strategy;

Whereas Croatia has demonstrated a desire to protect minority rights and promote a viable multiethnic society;

Whereas, in 2002, Croatia adopted the Constitutional Law on the Rights of National Minorities, ensuring the representation of minorities in the Parliament of Croatia and the establishment of the councils of national minorities;

Whereas the Government of Croatia has concluded specific bilateral agreements on the protection of minority rights with Hungary, Italy, and Serbia and Montenegro and has concluded an agreement on cooperation with representatives of the Independent Democratic Serb Party in the Parliament of Croatia;

Whereas three prominent members of the Parliament of Croatia, Ratko Gajica, Milorad Pupovac, and Vojislav Stanimirovic, who represent the Serb minority, sent a letter to the Assistant to the President for National Security Affairs, Stephen Hadley, expressing their support for the Prime Minister of Croatia, Ivo Sanader, and for Croatia's path toward membership in the European Union and in the North Atlantic Treaty Organization (''NATO'');

Whereas Croatia has shown dedication to advancing the return, reconstruction, and restitution of property in Croatia;

Whereas Croatia has proven to be a reliable partner of the United States in seeking the stabilization of the region;

Whereas Croatia participated in the Iraq International Conference held in Brussels on June 22, 2005, and offered to train and educate nationals of Iraq at universities in Croatia;

Whereas Croatia is taking part in the training of Iraqi security forces at the International Training Center in Jordan and has offered to train additional security personnel for Iraq in Croatia;

Whereas Croatia has been a partner in the war against terrorism, sent troops to Afghanistan as part of the NATO-led International Security Assistance Force in support of the war against terrorism in 2002, and has provided civilians to staff the Provincial Reconstruction Team under the leadership of NATO in Fayzabad;

Whereas, during July 2005, Croatia adopted a decision to triple its military presence in the International Security Assistance Force;

Whereas Croatia has endorsed and is participating in the Proliferation Security Initiative with like-minded nations across the world to prevent the flow of weapons of mass destruction, missile systems, and related material;

Whereas, on June 1, 2005, Croatia was the fourth nation to sign the Proliferation Security Initiative Shipboarding Agreement with the United States to prevent the maritime transfer of dangerous shipments of weapons or other illicit materials to keep such weapons and materials out of the hands of dangerous actors and terrorists;

Whereas, since Croatia has become an independent country, the United States has shown support for Croatia in many ways, including by providing Croatia with economic and military assistance that has contributed significantly to the progress and continued success occurring in Croatia;

Whereas the United States has encouraged Croatia's transformation and the future membership of Croatia in NATO;

Whereas a whole and free Europe cannot be fully achieved without the integration into NATO of all countries that share the common values of democracy, the rule of law, and respect for human rights;

Whereas the Membership Action Plan developed for NATO, which was launched in April 1999, is a program of assistance that provides both goals and a roadmap for countries aspiring to membership in NATO;

Whereas Croatia was invited into the Membership Action Plan in May 2002 and has made substantial progress toward the achievement of the reforms required for receiving an invitation to start accession talks with NATO;

Whereas the United States, Croatia, Albania, and Macedonia are signatories to the United States-Adriatic Charter for Partnership, which promotes Euro-Atlantic integration and commits the signatory nations to the values and principles of NATO and to membership in NATO at the earliest possible time;

Whereas Croatia supports regional cooperation as a means of bringing stability to Europe, particularly Southeast Europe, and has cooperated with the countries that neighbor Croatia to promote such stability, including providing technical and other assistance to countries that seek membership in the European Union;

Whereas, on October 3, 2005, the European Union decided to open accession negotiations with Croatia based on the assessment of the European Union's Council of Ministers that Croatia met the political and economic criteria for candidacy in the European Union, including that Croatia was fully cooperating with the International Criminal Tribunal for the former Yugoslavia;

Whereas the cooperation between the Government of Croatia and the Tribunal improved significantly under Prime Minister Ivo Sanader;

Whereas, since November 2003, Croatia has handed over to the Tribunal eleven individuals indicted for war crimes;

Whereas the cooperation of the Government of Croatia with the Tribunal assisted in the arrest of Ante Gotovina on December 8, 2005, in Spain and his transfer to the Tribunal on December 10, 2005;

Whereas the success of the Government of Croatia in bringing war criminals to justice demonstrates the commitment of the Government to move Croatia toward a brighter future of peace, stability, and prosperity for its people; and

Whereas Croatia shares the common interests and values of the free and democratic world: Now, therefore, be it

*Resolved*, That—

(1) since the Republic of Croatia became an independent country, the Government and people of Croatia have made significant progress in strengthening democratic institutions, respect for human rights, and the rule of law in Croatia;

(2) Croatia's membership in the North Atlantic Treaty Organization (''NATO'') would contribute to stability in Southeast Europe;

(3) it is the sense of the Senate that—

(A) the Government and people of Croatia should be commended for their progress on protecting minority rights in Croatia, progress toward achieving the political, economic, military, and other requirements of NATO's Membership Action Plan, contribution to the International Security Assistance Force and the war against terrorism, and for their constructive participation the Proliferation Security Initiative and in the United States-Adriatic Charter;

(B) the Government of Croatia should be commended for its cooperation with the International Criminal Tribunal for the former Yugoslavia which led to the apprehension and transfer of several individuals indicted for war crimes, including Ante Gotovina, to the Tribunal;

(C) the Government of Croatia should continue its cooperation with the Tribunal;

(D) the Government of Croatia should continue and strengthen its role as a partner on nonproliferation and its support in the war against terrorism and in Iraq;

(E) the Government of Croatia should continue its efforts to implement defense reforms; and

(F) the Government of the United States should continue and increase its defense and security cooperation with the Government of Croatia, including through education, training, and technical cooperation, to assist Croatia in the reform process and in fulfilling its requirements for membership in NATO; and

(4) upon complete satisfaction of the criteria for NATO membership, in accordance with NATO's guidelines, Croatia should be invited to be a full member of NATO at the earliest possible date.

## THANK OUR DEFENDERS WEEK

Mr. FRIST. I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 343, submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 343) expressing the sense of the Senate that the week of December 19, 2005 shall be designated ''Thank Our Defenders Week.''

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 343) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 343

Whereas, ever since our Nation was founded, the members of our military, soldiers, sailors, Airmen, Marines, Coast Guard personnel, active duty, Guard, and reserve, have played a critical role protecting America's vital interests and spreading peace throughout the world;

Whereas more than 193,000 troops in the Persian Gulf region are courageously fighting insurgents and helping to establish democracies in Iraq and Afghanistan;

Whereas 19,000 servicemen and servicewomen are stationed in Afghanistan, fighting Al-Qaeda and providing security for the people of that fledgling nation;

Whereas over 30,000 troops are protecting American interests and maintaining peace on the Korean peninsula;

Whereas, in total, nearly 300,000 brave men and women are actively serving on the soil of 120 foreign countries and on the High Seas, fighting terrorists and making sacrifices for American citizens and families; and

Whereas, thanks to their tireless efforts, a brutal dictatorship in Iraq and an oppressive regime in Afghanistan have given way to emerging democratic societies: Now, therefore, be it

*Resolved*, That with gratitude it is the sense of the Senate that the week of December 19, 2005 should be designated ''Thank Our Defenders week.''

## GEORGIA'S SOUTH OSSETIAN PEACE PLAN

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 344 which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 344) expressing support for the Government of Georgia's South Ossetian Peace Plan and the successful and peaceful reintegration of the Region of Georgia.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 344) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 344

Whereas during December 1991, Georgia was internationally recognized as an independent and sovereign country following the formal dissolution of the Union of Soviet Socialist Republics;

Whereas the United States supports the independence, sovereignty, territorial integrity, and ongoing democratic reform process in Georgia;

Whereas the United States reaffirms its support for the peaceful resolution of the conflict in Adjura and the restoration of democracy and political stability in that region of Georgia;

Whereas as a result of a conflict from 1991 to 1992, a separatist regime has enforced its rule in the Georgia territory of South Ossetia, impoverishing the people living in South Ossetia, militarizing the area, allowing organized crime to flourish, and posing a threat to the peace and security in the region;

Whereas the Government of Georgia has announced a peace plan to reach a full political settlement to the South Ossetian conflict;

Whereas the Government of Georgia has acknowledged that mistakes were made in its past efforts in dealing with the region of South Ossetia;

Whereas at the 59th meeting of the United Nations General Assembly, Georgian President Mikhail Saakashvili outlined specific components of a peace initiative that includes demilitarization, confidence building measures, and economic, social, cultural, and political steps to protect the South Ossetian people and their rights while reintegrating the region, with significant autonomy, into Georgia;

Whereas President Saakashvili reaffirmed the main principles of the peace agreement at the Parliamentary Assembly Council of Europe in January, 2005, held in Strasbourg, France;

Whereas a formal comprehensive peace proposal based on the Strasbourg principles was formally proposed on October 27, 2005, at the Organization for Security and Co-operation in Europe; and

Whereas on December 6, 2005, at their 13th Ministerial Council Meeting in Ljubljana, Slovenia, the Organization for Security and Co-operation in Europe endorsed the Government of Georgia's peace plan, stating, ''We welcome the steps taken by the Georgian side to address the peaceful resolution of the conflict and believe that the recent proposals, in particular the Peace Plan built upon the initiatives of the President of Georgia presented at the 59th United Nations General Assembly and supported by the sides, will serve as a basis for the peaceful settlement of the conflict'': Now, therefore, be it

*Resolved*, That the Senate—

(1) commends the Government of Georgia for its vision and determination in its efforts to resolve peacefully the conflict in South Ossetia;

(2) supports the sovereignty, independence, and territorial integrity of the democratic Government of Georgia;

(3) urges all Organization for Security and Co-operation in Europe participating States to respect fully the independence, sovereignty, territorial integrity of Georgia, refraining from any acts constituting a threat of or use of force, direct or indirect, and abiding by the principle of the inviolability of frontiers;

(4) expresses its support for the Government of Georgia's plan to control peacefully and reestablish authority in the region of South Ossetia, viewing it as an opportunity to restore the territorial integrity of the country and to protect the individual rights and democratic liberties of those living in South Ossetia;

(5) urges the United States to increase its efforts in support of the peaceful reincorporation of South Ossetia to Georgia, including efforts to support the greater involvement of the international community, including the Russian Federation, the Organization for Security and Cooperation in Europe, the European Union, and international organizations in the peaceful settlement of the South Ossetian conflict; and

(6) supports the ongoing democratic transformation in Georgia and will continue to monitor closely the peace process in South Ossetia, including the implementation by all sides of their obligations under the peace plan if it is accepted.

## CONGRATULATING FENTON ART GLASS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 345 which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 345) recognizing the 100th anniversary of Fenton Art Glass, a beloved institution in West Virginia, that continues to contribute to the economic and cultural heritage of the State through its production of world renowned, hand-blown glass.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 345) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 345

Whereas Fenton Art Glass rose from its humble beginnings as a glass decorating company in 1905, and came to settle in Williamstown, West Virginia, by opening a factory to create their own glass when they were unable to obtain the glass that they needed;

Whereas, with the vision of brothers Frank and John Fenton, Fenton Art Glass began to create innovative new colors and established the company in the forefront of the hand-blown glass industry;

Whereas in 1907, Fenton introduced its highly colorful Iridescent, or ''Carnival'' Glass, which became instantly successful throughout the country and is now highly prized by collectors around the world;

Whereas during the 1930s and 1940s, Fenton addressed the shortages felt by families in the United States by producing mixing bowls and tableware that were often unavailable during the World War II and Depression shortages;

Whereas Fenton Art Glass is not only a family tradition, with the third generation of the Fenton family now carrying on the legacy, but also a West Virginia institution, employing generations of workers; and

Whereas Fenton Glass, known for its beauty and precision in craftsmanship, is a symbol of the dedication and care of the Fenton family, as well as the pride in craftsmanship so characteristic of the West Virginia people: Now, therefore, be it

*Resolved*, That the Senate congratulates Fenton Art Glass on its centennial milestone, for creating beautiful, hand-blown glass in West Virginia for 100 years.

## COMMENDING THE APPALACHIAN STATE UNIVERSITY FOOTBALL TEAM

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 346 which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 346) commending the Appalachian State University Football Team for winning the 2005 National Collegiate Athletic Association Division 1–AA Football Championship.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 346) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 346

Whereas on December 16, 2005, the Appalachian State Mountaineers defeated the Northern Iowa Panthers in the Championship game of the National Collegiate Athletic Association (''NCAA'') Division I–AA Football Tournament in Chattanooga, Tennessee;

Whereas the Mountaineers are the first team from Appalachian State to win a NCAA Championship in school history;

Whereas Appalachian State is the first university in the State of North Carolina to win a NCAA football championship;

Whereas head coach Jerry Moore, the all-time winningest coach in Southern Conference history, won his first NCAA title in his seventeenth year as head coach of the Mountaineers, improving to 140–67 his record as head coach at Appalachian State;

Whereas defensive ends Marques Murrell and Jason Hunter, as well as safety Corey Lynch, were named to the I–AA All America team;

Whereas junior defensive end Marques Murrell, who finished the game with 9 tackles and forced a fumble with 9 minutes, 14 seconds remaining in the game, and senior Jason Hunter, who finished the game with ten tackles, returned it for the winning touchdown;

Whereas injured senior quarterback and Southern Conference Offensive Player of the Year Richie Williams courageously led the Mountaineers in the second half while playing with an injured ankle tendon;

Whereas the Mountaineer defense held the Panthers scoreless in the second half;

Whereas backup quarterback Trey Elder led Appalachian State to a 29–23 victory over Furman University to earn a spot in the final contest;

Whereas the Mountaineers defeated Lehigh University and Southern Illinois to advance to the I–AA ''Final Four'';

Whereas the Mountaineer team members are excellent representatives of a fine university that is a leader in higher education, producing many fine student-athletes and other leaders;

Whereas each player, coach, trainer, manager, and staff member dedicated this season and their efforts to ensure the Appalachian State University Mountaineers reached the summit of college football;

Whereas the Mountaineers showed tremendous dedication to each other, appreciation to their fans, sportsmanship to their opponents, and respect for the game of football throughout the 2005 season; and

Whereas residents of the Old North State and Appalachian fans worldwide are to be commended for their long-standing support, perseverance, and pride in the team: Now, therefore, be it

*Resolved*, That the Senate—

(1) commends the champion Appalachian State University Mountaineers for their historic win in the 2005 National Collegiate Athletic Association Division I–AA Football Championship;

(2) recognizes the achievements of the players, coaches, students, alumni, and support staff who were instrumental in helping Appalachian State University win the championship; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to Appalachian State University Chancellor Kenneth Peacock and head coach Jerry Moore for appropriate display.

## CHARITABLE GIVING

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Con. Res. 75 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 75) encouraging all Americans to increase their charitable giving with the goal of increasing the annual amount of charitable giving in the United States by 1 percent.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The concurrent resolution (S. Con. Res. 75) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 75

Whereas individual charitable giving rates among Americans have stagnated at 1.5 to 2.2 percent of aggregate individual income for the past 50 years;

Whereas a 1 percent increase (from 2 percent to 3 percent) in charitable giving will generate over $90,000,000,000 to charity;

Whereas charitable giving is a significant source of funding for health, education, and welfare programs; and

Whereas a 1 percent increase in charitable giving would provide some of the funds that will allow the nation to meet our health, education and welfare goals. Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That Congress encourages all Americans to increase their charitable giving, with the goal of increasing the annual amount of charitable giving in the United States by 1 percent.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT OF 2005—CONFERENCE REPORT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the conference report to accompany S. 1281, the NASA authorization bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1281), to authorize appropriations for the National Aeronautics and Space Administration for science, aeronautics, exploration, exploration capabilities, and the Inspector General, and for other purposes, for fiscal years 2006, 2007, 2008, 2009, and 2010, having met, have agreed that the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment.

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

(The conference report is printed in the House Proceedings of the RECORD of December 18, 2005.)

Mrs. HUTCHISON. Mr. President, last Friday, when I spoke to my colleagues about the NASA authorization bill, the Senate, in the press of other business at the end of the session, was unable to take up the conference report on S. 1281, the National Aeronautics and Space Administration Authorization Act of 2005. Since then, the House of Representatives has adopted the report under suspension of the rules, demonstrating wide support for the compromise bill. I am very pleased that the Senate is now poised to approve the conference report as well.

I want to thank my ranking member on the Science and Space Subcommittee, Senator NELSON of Florida, for all his help. Chairman STEVENS and Senator INOUYE were active participants throughout this process, and I certainly appreciate their efforts. Senator LOTT was a key member of the Senate team that has brought us to this point.

My subcommittee staff, Jeff Bingham and Tom Cremins, and Senator NELSON's staff, Jean Toal Eisen and Chan Lieu, work so well together and have done so much to bring us to this point, and I want to say thank you to them.

When President Bush announced a new Vision for Space Exploration in January of 2004, he was not simply describing a new mission for NASA; he was describing a pathway to a future for the next generation. The legislation embodied in this conference report represents a statement by the Congress that the Vision for Space Exploration is the right vision for America in the new age of space. At the same time, the bill provides guidance to help NASA do its part in leading the way along this new path to the future by building effectively on lessons learned and by efficiently using its resources, especially the talent and expertise of its workforce.

S. 1281, as modified by the conference report, provides authorization for NASA funding at $17.9 billion in fiscal year 2007 and $18.7 billion in fiscal year 2008. The conferees believe these levels of funding will ensure the successful return to flight of the space shuttle and the completion of the international space station, as well as continuing the important work in exploration, science, aeronautics and education.

These funding levels also take into account the recently identified shortfall between what the administration had been projecting for shuttle flights and the number of flights needed to complete the international space station, meet our international commitments, and provide an important research capability in space.

I am especially pleased that the conference report provides the designation of the U.S. portion of the space station as national laboratory. This is an important and significant part of the bill. First, it demonstrates that the Congress understands the great value and potential represented by the research that can be done aboard the space station. It underscores the need to ensure that the laboratory is as capable, efficient and well equipped as we can make it. Second, it provides a framework for bringing additional, non-NASA resources to bear in supporting research aboard the space station. This will enable NASA to focus its resources on research needed to support the Vision for Exploration, while continuing to provide space station research opportunities in the broader areas of life sciences and fundamental sciences.

In my previous statement, I mentioned briefly a perfect example of the kind of fundamental research that the space station enables, which was described in a recent hearing before the Commerce Committee. Dr. Sam Ting, of MIT, discussed the Alpha Magnetic Spectrometer, scheduled to be attached to the space station. This device takes advantage of the unique space environment to measure—and help understand—the characteristics of matter in the universe. The results of this experiment could revolutionize our knowledge about the interactions of matter and potentially lead, for example, to the development of new, and virtually unlimited, energy sources.

As we move forward with the Vision for Space Exploration, we will need new vehicles and launch capabilities. NASA has made the decision to base those new vehicles on much of the existing capabilities and designs of the space shuttle program. This legislation ratifies that decision and provides the policy foundation to ensure its successful implementation. The evolution of our launch vehicles to a new generation requires that we be especially careful not to undermine our existing capabilities for human space flight. The legislation ensures a smooth transition between the shuttle and the new crew exploration vehicles by providing adequate resources to continue shuttle flights and accelerate CEV development so as to minimize any gap between the two systems. In addition, the legislation specifically directs NASA to make the maximum possible utilization of the personnel, assets, and capabilities of the space shuttle program in developing the next generation of crew and cargo vehicles. The new CEV will be designed with the flexibility to carry out a variety of missions. It will specifically be designed to provide access to the space station, and thus fulfills the role of a crew rescue vehicle, CRV, if needed, to ensure the safety of our crews aboard the international space station.

In order to further facilitate the evolution of current human space flight systems into those needed for the Vision for Exploration, the bill has provided for the merging of the human space fight activities into a single account. This is intended to provide the closest possible interaction between these activities, in those areas where they can be mutually supportive. At the same time, the legislation contains language to ensure that both the exploration activities and the human space flight, or space operations activities, retain sufficient resources to fulfill their core objectives.

Another important and historical NASA research activity is aeronautical research, a fundamental part of NASA's activities since its inception. All of us recognize that the continued health of the Nation's aerospace industry in a very competitive global marketplace makes it essential that we have solid aeronautical research capabilities. This legislation directs the development of a national policy to guide the Nation's aeronautical research—including that conducted by NASA. This policy will enable us to make informed decisions about the future directions for aeronautics research and the necessary resources to support them.

One of the more exciting new developments in space exploration is the expanded level of commercial interest in supporting and expanding space exploration. This legislation encourages those developments. It provides expanded authority for competitive prizes to promote commercial developments, and it encourages the use of commercial services and capabilities in servicing the space station, to cite just two examples. This is clearly an important new development in space exploration which the bill fully endorses.

Finally, let me say something about the broad range of science activities for which NASA has always been known. This conference agreement expresses very clearly the need for maintaining a balanced science portfolio throughout all NASA programs and provides the funding authority necessary to ensure the space sciences, earth sciences, and education activities remain vigorous parts of NASA's mission.

Mr. President, this legislation provides a comprehensive, forward-looking and responsible approach to the transition of our Nation's space exploration programs into a new era of discovery. I believe that, together with our colleagues in the House, we have crafted a congressional consensus that will help ensure this Nation's leadership in space exploration and provide benefits beyond measure and beyond imagination to this Nation and the world.

Mr. LEVIN. Mr. President, I urge passage by unanimous consent of the 2005 NASA Authorization Act and managers' package that has been agreed to by conferees from the House and Senate.

I express my thanks for the work that my fellow conferees, the committees, subcommittees, and our staffs have done on this bill. I am confident that it will help Administrator Griffin to lead NASA to accomplish its many missions.

America is a nation of explorers. NASA explores the frontiers of aviation by atmospheric flight; the frontiers of space by going where others have never been; and the frontiers of science by conducting scientific endeavors that broaden our understanding of life, our home planet, and the heavens. NASA has not been authorized by Congress for some time. In fact, the last two times NASA was authorized was 1993 and 2000.

This is the first authorization of NASA in 6 years. NASA must be held accountable to the Congress through the oversight of the agency. With an authorization bill passed only once every 5 to 7 years, the role has defaulted to the Appropriations Committee, which has many other items on its plate. Now with this NASA authorization legislation, hopefully there will be a healthier and more meaningful communication between the agency and the Congress.

The NASA Authorization Act of 2005 will help the Congress to do a better job of performing oversight of NASA. The act is a 3-year bill, authorizing NASA from 2006 through 2008.

Because appropriators have already funded NASA for fiscal year 2006 the authorizing conferees receded to the appropriations bill for that fiscal year. The bill authorizes $17.932 billion for fiscal year 2007 and $18.686 billion for fiscal year 2008, and provides more funding than the President's budget projections.

Like many of our colleagues, Senator HUTCHISON and I believe that recent NASA budget requests have been below the levels required for the agency to perform its various missions effectively. That was made apparent recently when Administrator Griffin testified at a committee hearing before the U.S. House of Representatives, that the space shuttle program will have a $3 billion plus shortfall over the next 5 years. Dr. Griffin's concerns have been echoed by a letter recently provided by several Members of the House to the White House calling for the space shuttle program to be fully funded.

This legislation authorizes NASA to return humans to the Moon, to explore it, and to maintain a human presence on the Moon. Consistent with the President's vision, it also requires using what we learn and develop on the Moon as a stepping-stone to future exploration of Mars.

To carry out these missions, this act requires NASA to develop an implementation plan for the transition from shuttle to crew exploration vehicle, CEV. The plan will help NASA to make a smooth transition from retirement of the space shuttle orbiters to the replacement spacecraft systems. The implementation plan will help make sure that we can keep the skills and the focus that are needed to assure that each space shuttle flight is safe through retirement of the orbiters, and to retain those personnel needed for the CEV and heavy lift cargo spacecraft.

The bill should be helpful for reducing if not eliminating a gap in America's ability to put humans in Earth orbit. The act also directs NASA to plan for and consider a Hubble servicing mission after the second space shuttle return to flight mission has been completed.

This NASA authorization bill calls for utilization of the international space station for basic science as well as exploration science. It is important that we reap the benefits of our multibillion dollar investment in the space station. This act ensures that NASA will maintain a focus on the importance of basic science.

This legislation directs the Aerospace Safety Advisory Panel to monitor and measure NASA's improvements to their safety culture, including employees' fear of reprisals for voicing concerns about safety. The bill encourages NASA to more effectively utilize lessons learned and best practices, and to implement cost controls that are more effective for making better use of our taxpayers' money.

This authorization bill addresses NASA aeronautics and America's preeminence in aviation, calling for the President of the United States to pursue a national policy for aeronautics. The Europeans have stated their intent to dominate the airplane market by 2020. It is not in our national interest to let that occur.

The bill includes a limitation on reprogramming funds from space operations, includes the space shuttle and international space station, to exploration systems, and vice versa. This limitation will ensure that no more than 10 percent of shuttle and station funds can be transferred into the exploration systems program to be used for a shortfall in an exploration-related development program. However, it will not limit the exploration systems and space shuttle programs from utilizing the same personnel, equipment, and contract vehicles to continue to safely operate the shuttle while developing the shuttle-derived crew exploration vehicle.

This act gives America the opportunity for implementing the vision for space exploration; renewing our commitment to U.S. civil aviation and NASA aeronautics research; conducting important science activities at NASA; and assuring that America has continuous human access to space.

By passing this legislation, we will continue to strengthen our economy and inspire the next generation of scientists, engineers, and explorers.

Mr. INOUYE. Mr. President, I wish to thank Senators HUTCHISON, NELSON, and STEVENS, for their leadership in bringing together the different bills from the Senate and the House. The final product is the result of hard work and compromise. It provides the National Aeronantics and Space Administration, NASA, and the country clear congressional direction on how to proceed with human space exploration, and it emphasizes NASA's invaluable work in science and education.

Human space exploration is a key component of this bill. I am confident that space discovery will continue to excite young minds and, hopefully, inspire them to pursue an education in math and science. The skills and talents they develop will not only help them reach the stars, they will propel American innovation and define our country's future.

At the same time, we must not overlook safety. I applaud Senator NELSON and the other conferees for keeping safety a top priority in this legislation.

In addition, I want to express my appreciation for the conferees' willingness to accommodate my efforts to promote the design and development of new science facilities, such as telescopes through the National Science Foundation, as well as NASA.

NASA plays a strong role in astronomy from the Hubble Telescope to the Keck Outrigger Project in Hawaii. I am

pleased to see that the bill affirms NASA's commitment to astronomy by ensuring that the Hubble will be serviced. It is my hope that Section 616 will also help NASA work with institutions, such as the Mauna Kea Astronomy Education Center, to make the work of world-class scientists accessible to their neighbors and children.

Finally, I would like to thank JEFF BINGHAM, Tom Cremins, Jean Toal Eisen and Chan Lieu of the Commerce Committee staff, and Mike Dodson, a fellow in Senator BILL NELSON's office, for their hard work on this important measure. I understand Mr. Dodson will be leaving at the end of the year. We will miss his counsel and expertise.

I urge the swift adoption of the conference report.

Mr. NELSON of Florida. Mr. President, my fellow Senators, I am pleased to join Senators HUTCHISON, STEVENS, INOUYE, and LOTT today in presenting the 2005 NASA Authorization Act and managers' package that has been agreed to by conferees from the House and Senate.

I express my thanks for the work that my fellow conferees, the committees, subcommittees, and our staffs have done on this bill. I am confident that it will help Administrator Griffin to lead NASA to accomplish its many missions.

America is a nation of explorers. NASA explores the frontiers of aviation by atmospheric flight, the frontiers of space by going where others have never been; and the frontiers of science by conducting scientific endeavors that broaden our understanding of life, our home planet, and the heavens. NASA has not been authorized by Congress for some time. In fact, the last two times NASA was authorized was 1993 and 2000.

Congress needs to authorize NASA more often. When NASA is authorized infrequently, then oversight may become lax. The lack of an authorization bill leaves the authorizing function to the Appropriators—and they don't have time and it's not their job. In fact, the lack of oversight provided by authorizers over the last several years may have contributed to the loss of the Space Shuttle *Columbia*.

The NASA Authorization Act of 2005 will help the Congress to do a better job of performing oversight of NASA. The act is a 3-year bill, authorizing NASA from 2006 through 2008. It authorizes NASA appropriations for fiscal year 2007 and 2008.

Because appropriators have already funded NASA for fiscal year 2006 the authorizing conferees receded to the appropriations bill for that fiscal year. The bill authorizes $17.932 billion for fiscal year 2007 and $18.686 billion for fiscal year 2008, and provides more funding than the President's budget projections.

Like many of our colleagues, Senator HUTCHISON and I believe that recent NASA budget requests have been below the levels required for the agency to perform its various missions effectively. That was made apparent recently when Administrator Griffin testified at a committee hearing before the House of Representatives, that the Space Shuttle program will have a $3 billion plus shortfall over the next 5 years. Dr. Griffin's concerns have been echoed by a letter recently provided by several Members of the House to the White House calling for the space shuttle program to be fully funded.

This legislation authorizes NASA to return humans to the Moon, to explore it, and to maintain a human presence on the Moon. Consistent with the President's vision, it also requires using what we learn and develop on the Moon as a stepping-stone to future exploration of Mars.

To carry out these missions, this act requires NASA to develop an implementation plan for the transition from shuttle to crew exploration vehicle, CEV. The plan will help NASA to make a smooth transition from retirement of the space shuttle orbiters to the replacement spacecraft systems. The implementation plan will help make sure that we can keep the skills and the focus that are needed to assure that each Space Shuttle flight is safe through retirement of the orbiters, and to retain those personnel needed for the CEV and heavy lift cargo spacecraft.

The bill should be helpful for reducing if not eliminating a gap in America's ability to put humans in Earth orbit. The act also directs NASA to plan for and consider a Hubble servicing mission after the second space shuttle return to flight mission has been completed.

This NASA authorization bill calls for utilization of the international space station for basic science as well as exploration science. It is important that we reap the benefits of our multibillion dollar investment in the space station. This act ensures that NASA will maintain a focus on the importance of basic science.

This legislation directs the Aerospace Safety Advisory Panel to monitor and measure NASA's improvements to their safety culture, including employees' fear of reprisals for voicing concerns about safety. The bill encourages NASA to more effectively utilize lessons learned and best practices, and to implement cost controls that are more effective for making better use of our taxpayers' money.

This authorization bill addresses NASA aeronautics and America's preeminence in aviation, calling for the President of the United States to pursue a national policy for aeronautics. The Europeans have stated their intent to dominate the airplane market by 2020. It is not in our national interest to let that occur.

The bill includes a limitation on reprogramming funds from space operations—(includes the space shuttle and international space station)—to exploration systems, and vice versa. This limitation will ensure that no more than 10 percent of shuttle and station funds can be transferred into the exploration systems program to be used for a shortfall in an exploration-related development program. However, it will not limit the exploration systems and space shuttle programs from utilizing the same personnel, equipment, and contract vehicles to continue to safely fly the shuttle while developing the shuttle-derived crew exploration vehicle.

This act gives America the opportunity for implementing the Vision for Space Exploration; renewing our commitment to U.S. civil aviation and NASA aeronautics research; conducting important science activities at NASA; and assuring that America has continuous human access to space.

By passing this legislation, we will continue to strengthen our economy and inspire the next generation of scientists, engineers, and explorers.

Mr. FRIST. Mr. President, I ask unanimous consent that the conference report be agreed to, and the motion to reconsider be laid upon the table.

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

The conference report was agreed to.

Mr. FRIST. Mr. President, this is the NASA authorization bill.

I congratulate Senator KAY BAILEY HUTCHISON for this particular piece of legislation, because as we look to the future, science and the technology, and the importance and significance of this legislation stands out.

A few minutes ago, I was talking about SMART grants—these math, education, science, and engineering grants which are being given to juniors and seniors in college. This marries with that beautifully in terms of making sure that we have a strong technology base in terms of jobs and competitiveness.

I congratulate our distinguished colleague from Texas, Senator HUTCHISON, for her leadership on this bill.

## TECHNICAL CORRECTION IN THE ENROLLMENT OF S. 1281

Mr. FRIST. I ask unanimous consent the Senate proceed to H. Con. Res. 324 which was received from the House.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A resolution (H. Con. Res. 324) directing the Secretary of the Senate to make a technical correction in the enrollment of S. 1281.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 324) was agreed to.

RUSSIAN FEDERATION PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Mr. FRIST. I ask unanimous consent the Committee on Foreign Relations be discharged from further consideration of H. Con. Res. 230, and the resolution be referred to the Committee on Finance.

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

Mr. FRIST. I ask unanimous consent that the Committee on Finance be discharged and the Senate proceed to the immediate consideration of H. Con. Res. 230.

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

The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 230) expressing the sense of the Congress that the Russian Federation must protect intellectual property rights.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 230) was agreed to.

The preamble was agreed to.

HONORING PILOTS OF THE FEDERAL FLIGHT DECK OFFICERS PROGRAM

RECOGNIZING AFRICAN-AMERICAN BASKETBALL TEAMS AND PLAYERS

Mr. FRIST. I ask unanimous consent that the Commerce Committee be discharged and the Senate proceed to the immediate consideration of H. Con. Res. 196 and H. Con. Res. 59, en bloc.

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

The clerk will report the resolutions by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 196) honoring the pilots of the United States commercial air carriers who volunteered to participate in the Federal flight deck officers program.

A concurrent resolution (H. Con. Res. 59) recognizing the contributions of the African-American basketball teams and players for their achievements, dedication, and contributions to the sport of basketball and to the Nation.

There being no objection, the Senate proceeded to consider the concurrent resolutions, en bloc.

Mr. FRIST. I ask unanimous consent the resolutions be agreed to, the preambles be agreed to, and the motions to reconsider be laid upon the table, en bloc.

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

The concurrent resolutions (H. Con. Res. 196 and H. Con. Res. 59) were agreed to.

The preambles were agreed to.

UNACCOMPANIED ALIEN CHILD PROTECTION ACT OF 2005

Mr. FRIST. I ask unanimous consent the Senate proceed to the immediate consideration of Calendar 74, S. 119.

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

The legislative clerk read as follows:

A bill (S. 119) to provide for the protection of unaccompanied alien children, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the Feinstein substitute amendment which is at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

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

The amendment (No. 2692) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (S. 119), as amended, was read the third time and passed.

VOLUNTARY MORTGAGE PAYMENT FORBEARANCE PERIOD

Mr. FRIST. I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 347, submitted earlier today by Senator LANDRIEU.

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

The legislative clerk read as follows:

A resolution (S. Res. 347) expressing the sense of the Senate that lenders holding mortgages on homes in communities of the Gulf Coast devastated by Hurricanes Katrina and Rita should extend current voluntary mortgage payment forbearance periods and not foreclose on properties in those communities.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 347) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 347

Whereas the Gulf Coast of the United States has experienced 1 of the worst hurricane seasons on record;

Whereas Hurricane Katrina and multiple levee breaks destroyed an estimated 275,000 homes in the Gulf Coast;

Whereas 20,664 businesses in the Gulf Coast sustained catastrophic damage from Hurricane Katrina and Hurricane Rita;

Whereas, according to the Bureau of Economic Analysis at the Department of Commerce, personal income has fallen more than 25 percent in Louisiana in the third quarter of 2005;

Whereas, in the time since Hurricanes Katrina, Rita, and Wilma, the Small Business Administration has only approved 20 percent of disaster loan applications for homeowners in the Gulf Coast and has a backlog of more than 176,000 applications for this assistance as of December 21, 2005;

Whereas, of the 20,741 homeowner disaster loan applications that have been approved in the Gulf Coast by the Small Business Administration, only 1,444 have been fully disbursed;

Whereas, in response to these circumstances, commercial banks, mortgage banks, credit unions, and other mortgage lenders voluntarily instituted 90-day loan forbearance periods after Hurricane Katrina and did not require home owners in the Gulf Coast to make mortgage payments until on or about December 1, 2005;

Whereas, after the termination of the 90-day forbearance period, many home and business owners have received notice from their lenders that they face foreclosure unless they make a lump sum balloon payment in the amount of the mortgage payments previously subject to forbearance; and

Whereas foreclosure on homes and businesses in the Gulf Coast will have a detrimental impact on the economy of the area, will deprive property owners of their equity at a time when they can least afford it, and will have a negative impact on lenders who will be holding properties that may not be readily marketable on the open market: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) Congress should act early in the second session of the 109th Congress to consider legislation to provide relief to homeowners in the Gulf Coast; and

(2) commercial banks, mortgage banks, credit unions, and other mortgage lenders should extend mortgage payment forbearance to March 31, 2006, in order to allow Congress the time to consider such legislation.

INTERNATIONAL COOPERATION TO MEET THE MILLENNIUM DEVELOPMENT GOALS ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 281, S. 1315.

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

The legislative clerk read as follows:

A bill (S. 1315) to require a report on progress toward the Millennium Development Goals, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Foreign Relations, with amendments.

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 1315

*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 ''International Cooperation to Meet the Millennium Development Goals Act of 2005''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) At the United Nations Millennium Summit in 2000, the United States joined more than 180 other countries in committing to work toward goals to improve life for the world's poorest people by 2015.

(2) Such goals include reducing the proportion of people living on less than $1 per day by ½, reducing child mortality by ⅔, and assuring basic education for all children, while sustaining the environment upon which human life depends.

(3) At the 2002 International Conference on Financing for Development, the United States representative reiterated the support of the United States for the Millennium Development Goals and advocated, along with other international participants, for a stronger focus on measurable outcomes derived from a global partnership between developed and developing countries.

(4) On March 22, 2002, President Bush stated, ''We fight against poverty because hope is an answer to terror. We fight against poverty because opportunity is a fundamental right to human dignity. We fight against poverty because faith requires it and conscience demands it. We fight against poverty with a growing conviction that major progress is within our reach.''.

(5) The 2002 National Security Strategy of the United States notes that ''a world where some live in comfort and plenty, while half of the human race lives on less than $2 per day, is neither just nor stable. Including all of the world's poor in an expanding circle of development and opportunity is a moral imperative and one of the top priorities of U.S. international policy''.

(6) The National Commission on Terrorist Attacks Upon the United States concluded that the Government of the United States must offer an example of moral leadership in the world and offer parents and their children a vision of the future that emphasizes individual educational and economic opportunity as essential to the efforts of the United States to defeat global terrorism.

[(7) The summit of the Group of Eight scheduled for July 2005, the United Nations summit scheduled for September 2005, and the Sixth Ministerial Conference of the World Trade Organization scheduled for December 2005 will provide opportunities to measure and continue to pursue progress on the Millennium Development Goals.]

*(7) The summit of the Group of Eight held during July 2005, the United Nations summit held during September 2005, and the Sixth Ministerial Conference of the World Trade Organization scheduled to be held during December 2005 have provided and will provide opportunities to measure and continue to pursue progress on the Millennium Development Goals.*

(8) The summit of the Group of Eight [scheduled for] *held* July 6 through July 8, 2005, in Gleneagles, Scotland, [will bring] *brought* together the countries that can make the greatest contribution to alleviating extreme poverty in Africa, the region of the world where extreme poverty is most prevalent.

(9) On June 11, 2005, the United States helped secure the agreement of the Group of Eight Finance Ministers to cancel 100 percent of the debt obligations owed to the World Bank, African Development Bank, and International Monetary Fund by countries that are eligible for debt relief under the Highly Indebted Poor Countries Initiative, the initiative established in 1996 by the World Bank and the International Monetary Fund for the purpose of reducing the debt burdens of the world's poorest countries, or under the Enhanced HIPC Initiative, as defined in section 1625 of the International Financial Institutions Act (22 U.S.C. 262p–8), which are poor countries that are on the path to reform.

(10) The report prepared by the Commission for Africa and issued by Prime Minister Tony Blair on March 11, 2005, entitled ''Our Common Interest'', called for coherence and coordination in the development of an overarching package of actions to be carried out by the countries of Africa and the international community to address the complex interlocking issues that challenge the continent, many of which have already been addressed individually in previous summits and under the Africa Action Plan enacted by the Group of Eight.

(11) The United States has recognized the need for strengthened economic and trade opportunities, as well as increased financial and technical assistance to Africa and other countries burdened by extreme poverty, through significant initiatives in recent years, including—

(A) the African Growth and Opportunity Act (19 U.S.C. 3701 et seq.) that has opened United States markets to thousands of products from Africa;

(B) the President's Emergency Plan for AIDS Relief developed under section 101 of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (22 U.S.C. 7611), the major focus of which has been on African countries;

(C) the Millennium Challenge Corporation established under section 604 of the Millennium Challenge Act of 2003 (22 U.S.C. 7703) that is in the process of committing new and significant levels of assistance to countries, including countries in Africa, that are poor but show great promise for boosting economic growth and bettering the lives of their people; and

(D) [the United States has canceled] *the cancellation by the United States of* 100 percent of the bilateral debt owed to the Untied States by countries eligible for debt relief under the Enhanced HIPC Initiative.

(12) The report prepared by the Commission for Africa entitled ''Our Common Interest'' includes the following findings:

(A) The people of Africa must demonstrate the leadership necessary to address the governance challenges they face, setting priorities that ensure the development of effective civil and police services, independent judiciaries, and strong parliaments, all of which reinforce a stable and predictable economic environment attractive to investment.

(B) Many leaders in Africa have pursued personal self-interest rather than national goals, a tendency that has been in some instances exacerbated and abetted by the manipulation of foreign governments pursuing their own agenda in the region to the detriment of the people of Africa.

(C) More violent conflict has occurred in Africa during the period between 1965 and 2005 than occurred in any other continent during that period, and the countries of Africa must engage on the individual, national, and regional level to prevent and manage conflict.

(D) The capacity to trade is constrained by a derelict or nonexistent infrastructure in most African countries as well as by the double-edged sword of tariff and nontariff barriers to trade that complicate markets and discourage investment both within and beyond the continent.

(E) The local resources for investment in people and the institutions necessary for good governance have been squandered, misappropriated, and, to an increasingly devastating effect, spent on servicing debt to the developed world. Such resources should be reoriented to serve the needs of the people through the use of debt forgiveness and support for institutional reform and internal capacity building.

(F) Failing to prevent conflict in Africa results in incalculable costs to African development and expense to the international community and the investment in preventing conflict is a fraction of such costs and expenses, in human, security, and financial terms.

(G) Despite difficulties, there is optimism and energy reflected in the scope of activities of individuals such as 2004 Nobel Peace Prize recipient, Wangari Maathai, as well as those of improved regional organizations such as the African Union and the New Partnership for Economic Development's Peer Review Mechanism, and subregional entities such as the Economic Community of West African States, the Inter-Governmental Authority on Development, and the potential of the Southern African Development Community.

(H) Political reform in Africa has produced results. For example, while in 1985 countries of sub-Saharan Africa ruled by dictators were the norm, by 2005 dictatorships are a minority and democracy has new life with governments chosen by the people increasing fourfold since 1991.

(13) The report prepared by the Commission for Africa entitled ''Our Common Interest'' includes the following recommendations:

(A) At this vital moment when globalization and growth, technology and trade, and mutual security concerns allow, and common humanity demands, a substantial tangible and coherent package of actions should immediately be taken by the international community, led by the most industrialized countries, in partnership with the countries of Africa, to address the poverty and underdevelopment of the African continent.

(B) The people of Africa must take responsibility and show courageous leadership in addressing problems and taking ownership of solutions as the means for ensuring sustainable development, while implementing governance reform as an underlying prerequisite for foreign assistance effectiveness.

(C) Each developed country has unique strengths and capacity to add value to a comprehensive assistance plan and should join their individual efforts to a coherent whole that is more efficient and responsive to Africa and the people of Africa.

(D) The international community must honor existing commitments to strengthen African peacekeeping capacity and go beyond those commitments to invest in more effective prevention and nonmilitary means to resolve conflict through such regional organizations as the African Union and the subregional Economic Community for West African States.

(E) A massive investment in physical infrastructure should be made to support commerce, extend governance, and provide opportunities for education, healthcare, investment and growth.

(F) Donors and the governments of the countries of Africa should devote substantial investment in the men and women of Africa through the education and health sectors, enabling and extending recent gains made to reach far more broadly into remote regions.

(G) The public sector should actively engage the private sector in driving growth through partnerships by reforming the laws, bureaucracy, and infrastructure necessary to maintain a climate that fosters investment by developing public-private centers of excellence to pursue such reforms.

(H) The countries of Africa must maximize the participation of women in both business and government, protect the rights of women, and work to increase the number of

women in leadership positions so as to capitalize on the ability of women to deliver scarce resources effectively and fairly.

(I) The international community must work together to dismantle trade barriers, including the immediate elimination of trade-distorting commodity support.

(J) International donors should strengthen multilateral institutions in Africa to respond appropriately to local and regional crises as well as to promote economic development and ensure the people of Africa are granted a stronger voice in international forums.

(K) The international community must join in providing creative incentives for commercial firms to research and develop products that improve water, sanitation, health, and the environment in ways that would dramatically reduce suffering and increase productive life-spans in Africa.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) GROUP OF EIGHT.—The term ''Group of Eight'' means the forum for addressing international economic, political, and social issues attended by representatives of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States.

(3) MILLENNIUM DEVELOPMENT GOALS.—The term ''Millennium Development Goals'' means the goals set out in United Nations Millennium Declaration, resolution [55/1] *55/2* adopted by the General Assembly of the United Nations on September 8, 2000.

**SEC. 4. SENSE OF CONGRESS.**

It is the sense of Congress that—

[(1) the President should continue to provide the leadership necessary at the summit of the Group of Eight scheduled for July 2005 at Gleneagles, Scotland, to encourage other countries to develop a true partnership to pursue the Millennium Development Goals;]

*(1) the President should continue to provide the leadership shown at the summit of the Group of Eight held in July 2005 at Gleneagles, Scotland, to continue to encourage other countries to develop a true partnership to pursue the Millennium Development Goals;*

(2) the President should urge the Group of Eight to consider the findings and recommendations contained in the report prepared by the Commission for Africa entitled ''Our Common Interest'', as a fundamental guide on which to base their planning, in partnership with the nations of Africa, for the development of Africa;

(3) the Group of Eight, as well as governments of the countries of Africa and regional organizations of such governments, should reaffirm and honor the commitments made in the Africa Action Plan enacted by the Group of Eight in previous years; and

[(4) the international community should pursue further progress toward achieving the Millennium Development Goals at the summit of the Group of Eight scheduled for July 2005, the United Nations summit scheduled for September 2005, and the Sixth Ministerial Conference of the World Trade Organization scheduled for December 2005.]

*(4) the international community should continue to build upon the progress made at the summit of the Group of Eight in July 2005 and the United Nations summit in September 2005 toward achieving the Millennium Development Goals, and should further enable such progress at the Sixth Ministerial Conference of the World Trade Organization scheduled for December 2005.*

**SEC. 5. REPORT.**

(a) REQUIREMENT.—Not later than 60 days after the date of the conclusion of [the World Trade Organization Ministerial meeting in Hong Kong that is scheduled to be held] *the Sixth Ministerial Conference of the World Trade Organization that is scheduled to be held in Hong Kong from* December 13 through December 18, 2005, the Secretary of State in consultation with other appropriate United States and international agencies shall submit a report to the appropriate congressional committees on the progress the international community is making toward achieving the Millennium Development Goals.

(b) CONTENT.—The report required by subsection (a) shall include the following:

(1) A review of the commitments made by the United States and other members of the international community at the summit of the Group of Eight [scheduled for] *in* July 2005, the United Nations summit [scheduled for] *in* September 2005, and the Sixth Ministerial Conference of the World Trade Organization scheduled for December 2005, that pertain to the ability of the developing world to achieve the Millennium Development Goals.

(2) A review of United States policies and progress toward achieving the Millennium Development Goals by 2015, as well as policies to provide continued leadership in achieving such goals by 2015.

(3) An [evaluation] *evaluation, to the extent possible,* of the contributions of other national and international actors in achieving the Millennium Development Goals by 2015.

(4) An assessment of the likelihood that the Millennium Development Goals will be achieved.

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

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

The amendment (No. 2693) was agreed to, as follows:

On page 13 line 21–22, strike ''as a fundamental guide on which to base their planning,''

The committee-reported amendments were agreed to.

The bill (S. 1315), as amended, was read the third time and passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

## VET CENTER ENHANCEMENT ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 290, S. 716.

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

The legislative clerk read as follows:

A bill (S. 716) to amend title 38, United States Code, to enhance services provided by vet centers, to clarify and improve the provision of bereavement counseling by the Department of Veterans Affairs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

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

The bill (S. 716) was read the third time and passed, as follows:

S. 716

*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 ''Vet Center Enhancement Act of 2005''.

**SEC. 2. EXPANSION OF OUTREACH ACTIVITIES OF VET CENTERS.**

(a) ADDITIONAL OUTREACH WORKERS.—The Secretary of Veterans Affairs shall employ not more than 50 veterans of Operation Enduring Freedom or Operation Iraqi Freedom for the purpose of providing outreach to veterans on the availability of readjustment counseling and related mental health services for veterans under section 1712A of title 38, United States Code.

(b) CONSTRUCTION WITH CURRENT OUTREACH PROGRAM.—The veterans employed under subsection (a) are in addition to any veterans employed by the Secretary for the purpose described in that subsection under the February 2004 program of the Department of Veterans Affairs to provide outreach described in that subsection.

(c) ASSIGNMENT TO VET CENTERS.—The Secretary may assign any veteran employed under subsection (a) to any vet center that the Secretary considers appropriate in order to meet the purpose described in that subsection.

(d) INAPPLICABILITY AND TERMINATION OF LIMITATION ON DURATION OF EMPLOYMENT.—Any limitation on the duration of employment of veterans under the program described in subsection (b) is hereby terminated, and shall not apply to veterans employed under such program or under this section.

(e) EMPLOYMENT STATUS.—Veterans employed under subsection (a) shall be employed in career conditional status, which is the employment status in which veterans are employed under the program described in subsection (b).

(f) DEFINITIONS.—In this section:

(1) VET CENTER.—The term ''vet center'' means a center for the provision of readjustment counseling and related mental health services under section 1712A of title 38, United States Code.

(2) VETERAN OF OPERATION ENDURING FREEDOM OR OPERATION IRAQI FREEDOM.—The term ''veteran of Operation Enduring Freedom or Operation Iraqi Freedom'' means any veteran who served in the Southwest Asia theater of operations during Operation Enduring Freedom or Operation Iraqi Freedom.

**SEC. 3. CLARIFICATION AND ENHANCEMENT OF BEREAVEMENT COUNSELING.**

(a) CLARIFICATION OF MEMBERS OF IMMEDIATE FAMILY ELIGIBLE FOR COUNSELING.—Subsection (b) of section 1783 of title 38, United States Code, is amended—

(1) by inserting ''(1)'' before ''The Secretary''; and

(2) by adding at the end the following new paragraph:

''(2) For purposes of this subsection, the members of the immediate family of a member of the Armed Forces described in paragraph (1) include the parents of such member.''.

(b) PROVISION OF COUNSELING THROUGH VET CENTERS.—Such section is further amended—

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

(2) by inserting after subsection (b) the following new subsection (c):

''(c) PROVISION OF COUNSELING THROUGH VET CENTERS.—Bereavement counseling may be provided under this section through the facilities and personnel of centers for the provision of readjustment counseling and related mental health services under section 1712A of this title.''.

**SEC. 4. FUNDING FOR VET CENTER PROGRAM.**

There is authorized to be appropriated to the Department of Veterans Affairs for fiscal year 2006, $180,000,000 for the provision of readjustment counseling and related mental health services through centers under section 1712A of title 38, United States Code, including for the discharge of the requirements of this Act (and the amendments made by this Act).

## VETERANS HEALTH CARE ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 284, S. 1182.

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

The legislative clerk read as follows:

A bill (S. 1182) to amend title 38, United States Code, to improve health care for veterans, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Veterans' Affairs, with an amendment.

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 1182

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

**[SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.**

[(a) SHORT TITLE.—This Act may be cited as the ''Veterans Health Care Act of 2005''.

[(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment or repeal to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

**[SEC. 2. COPAYMENT EXEMPTION FOR HOSPICE CARE.**

[Section 1710 is amended—

[(1) in subsection (f)(1), by inserting ''(other than hospice care)'' after ''nursing home care''; and

[(2) in subsection (g)(1), by inserting ''(other than hospice care)'' after ''medical services''.

**[SEC. 3. NURSING HOME BED LEVELS; EXEMPTION FROM EXTENDED CARE SERVICES COPAYMENTS FOR FORMER POWS.**

[Section 1710B is amended—

[(1) by striking subsection (b);

[(2) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

[(3) in subsection (b)(2), as redesignated—

[(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

[(B) by inserting after subparagraph (A) the following:

[''(B) to a veteran who is a former prisoner of war;''.

**[SEC. 4. REIMBURSEMENT FOR CERTAIN VETERANS' OUTSTANDING EMERGENCY TREATMENT EXPENSES. .**

[ (a) IN GENERAL.—Subchapter III of chapter 17 is amended by inserting after section 1725 the following:

**[''§ 1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable**

[''(a)(1) Subject to subsection (c), the Secretary may reimburse a veteran described in subsection (b) for expenses resulting from emergency treatment furnished to the veteran in a non-Department facility for which the veteran remains personally liable.

[''(2) In any case in which reimbursement is authorized under subsection (a)(1), the Secretary, in the Secretary's discretion, may, in lieu of reimbursing the veteran, make payment—

[''(A) to a hospital or other health care provider that furnished the treatment; or

[''(B) to the person or organization that paid for such treatment on behalf of the veteran.

[''(b) A veteran referred to in subsection (a) is an individual who—

[''(1) is enrolled in the health care system established under section 1705(a) of this title;

[''(2) received care under this chapter during the 24-month period preceding the furnishing of such emergency treatment;

[''(3) is entitled to care or services under a health-plan contract that partially reimburses the cost of the veteran's emergency treatment;

[''(4) is financially liable to the provider of emergency care treatment for costs not covered by the veteran's health-plan contract, including copayments and deductibles; and

[''(5) is not eligible for reimbursement for medical care or services under section 1725 or 1728 of this title.

[''(c)(1) Any amount paid by the Secretary under subsection (a) shall exclude the amount of any payment the veteran would have been required to make to the United States under this chapter if the veteran had received the emergency treatment from the Department.

[''(2) The Secretary may not provide reimbursement under this section with respect to any item or service—

[''(A) provided or for which payment has been made, or can reasonably be expected to be made, under the veteran's health-plan contract; or

[''(B) for which payment has been made or can reasonably be expected to be made by a third party.

[''(3)(A) Payment by the Secretary under this section on behalf of a veteran to a provider of emergency treatment shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish any liability on the part of the veteran for that treatment.

[''(B) The absence of a contract or agreement between the Secretary and the provider, any provision of a contract or agreement, or an assignment to the contrary shall not operate to modify, limit, or negate the requirement under subparagraph (A).

[''(4) In accordance with regulations prescribed by the Secretary, the Secretary shall—

[''(A) establish criteria for determining the amount of reimbursement (which may include a maximum amount) payable under this section; and

[''(B) delineate the circumstances under which such payment may be made, including requirements for requesting reimbursement.

[''(d)(1) In accordance with regulations prescribed by the Secretary, the United States shall have the independent right to recover any amount paid under this section if, and to the extent that, a third party subsequently makes a payment for the same emergency treatment.

[''(2) Any amount paid by the United States to the veteran, the veteran's personal representative, successor, dependents, or survivors, or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.

[''(3) Any amount paid by the United States to the provider that furnished the veteran's emergency treatment shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.

[''(4) The veteran or the veteran's personal representative, successor, dependents, or survivors shall—

[''(A) ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran;

[''(B) immediately forward all documents relating to a payment described in subparagraph (A);

[''(C) cooperate with the Secretary in an investigation of a payment described in subparagraph (A); and

[''(D) assist the Secretary in enforcing the United States right to recover any payment made under subsection (c)(3).

[''(e) The Secretary may waive recovery of a payment made to a veteran under this section that is otherwise required under subsection (d)(1) if the Secretary determines that such waiver would be in the best interest of the United States, as defined by regulations prescribed by the Secretary.

[''(f) For purposes of this section—

[''(1) the term 'health-plan contract' includes—

[''(A) an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement, under which health services for individuals are provided or the expenses of such services are paid;

[''(B) an insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of that Act (42 U.S.C. 1395j);

[''(C) a State plan for medical assistance approved under title XIX of such Act (42 U.S.C. 1396 et seq.); and

[''(D) a workers' compensation law or plan described in section 1729(A)(2)(B) of this title;

[''(2) the term 'third party' means—

[''(A) a Federal entity;

[''(B) a State or political subdivision of a State;

[''(C) an employer or an employer's insurance carrier; and

[''(D) a person or entity obligated to provide, or pay the expenses of, such emergency treatment; and

[''(3) the term 'emergency treatment' has the meaning given such term in section 1725 of this title.''.

[(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1725 the following:

[''Sec. 1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable.''.

**[SEC. 5. CARE FOR NEWBORN CHILDREN OF WOMEN VETERANS RECEIVING MATERNITY CARE .**

[(a) IN GENERAL.—Subchapter VIII of chapter 17 is amended by adding at the end the following:

[**"§ 1786. Care for newborn children of women veterans receiving maternity care**

[''The Secretary may furnish care to a newborn child of a woman veteran, who is receiving maternity care furnished by the Department, for not more than 14 days after the birth of the child if the veteran delivered the child in a Department facility or in another facility pursuant to a Department contract for the delivery services.''.

[(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1785 the following:

[''Sec. 1786. Care for newborn children of women veterans receiving maternity care.''.

**[SEC. 6. ENHANCEMENT OF PAYER PROVISIONS FOR HEALTH CARE FURNISHED TO CERTAIN CHILDREN OF VIETNAM VETERANS.**

[(a) HEALTH CARE FOR SPINA BIFIDA AND ASSOCIATED DISABILITIES.—Section 1803 is amended—

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

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

[''(c)(1) If a payment made by the Secretary for health care under this section is less than the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.

[''(2) The health care provider or agent may not impose any additional charge on the beneficiary who received the health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section;

[''(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary.

[''(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.''.

[(b) HEALTH CARE FOR BIRTH DEFECTS AND ASSOCIATED DISABILITIES.—Section 1813 is amended—

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

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

[''(c)(1) If payment made by the Secretary for health care under this section is less than the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.

[''(2) The health care provider or agent may not impose any additional charge on the beneficiary who received health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section;

[''(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary; and

[''(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.''.

**[SEC. 7. IMPROVEMENTS TO HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM.**

[(a) PERMANENT AUTHORITY.—Section 2011 (a) is amended—

[(1) in paragraph (1), by striking ''(1)''; and

[(2) by striking paragraph (2).

[(b) AUTHORIZATION OF APPROPRIATIONS.—Section 2013 is amended to read as follows:

[**"§ 2013. Authorization of appropriations**

[''There are authorized to be appropriated $130,000,000 for fiscal year 2006 and each subsequent fiscal year to carry out this subchapter.''.

**[SEC. 8. MARRIAGE AND FAMILY THERAPISTS.**

[(a) QUALIFICATIONS.—Section 7402(b) is amended—

[(1) by redesignating paragraph (10) as paragraph (11); and

[(2) by inserting after paragraph (9) the following:

[''(10) MARRIAGE AND FAMILY THERAPIST.—To be eligible to be appointed to a marriage and family therapist position, a person must—

[''(A) hold a master's degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and

[''(B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.''.

[(b) REPORT ON MARRIAGE AND FAMILY THERAPY WORKLOAD.—

[(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Under Secretary for Health, Department of Veterans Affairs, shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the provisions of post-traumatic stress disorder treatment by marriage and family therapists.

[(2) CONTENTS.—The report submitted under paragraph (1) shall include—

[(A) the actual and projected workloads in facilities of the Veterans Readjustment Counseling Service and the Veterans Health Administration for the provision of marriage and family counseling for veterans diagnosed with, or otherwise in need of treatment for, post-traumatic stress disorder;

[(B) the resources available and needed to support the workload projections described in subparagraph (A);

[(C) an assessment by the Under Secretary for Health of the effectiveness of treatment by marriage and family therapists; and

[(D) recommendations, if any, for improvements in the provision of such counseling treatment.

**[SEC. 9. PAY COMPARABILITY FOR CHIEF NURSING OFFICER, OFFICE OF NURSING SERVICES.**

[Section 7404 is amended—

[(1) in subsection (d), by striking ''subchapter III'' and inserting ''paragraph (e), subchapter III,''; and

[(2) by adding at the end the following:

[''(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid at a rate not to exceed the maximum rate established for the Senior Executive Service under section 5382 of title 5 United States Code, as determined by the Secretary.''.

**[SEC. 10. REPEAL OF COST COMPARISON STUDIES PROHIBITION.**

[Section 8110(a) is amended—

[(1) by striking paragraph (5); and

[(2) by redesignating paragraph (6) as paragraph (5).

**[SEC. 11. IMPROVEMENTS AND EXPANSION OF MENTAL HEALTH SERVICES.**

[(a) IN GENERAL.—The Secretary of Veterans affairs shall—

[(1) expand the number of clinical treatment teams principally dedicated to the treatment of post-traumatic stress disorder in medical facilities of the Department of Veterans Affairs;

[(2) expand and improve the services available to diagnose and treat substance abuse;

[(3) expand and improve tele-health initiatives to provide better access to mental health services in areas of the country in which the Secretary determines that a need for such services exist due to the distance of such locations from an appropriate facility of the Department of Veterans Affairs;

[(4) improve education programs available to primary care delivery professionals and dedicate such programs to recognize, treat, and clinically manage veterans with mental health care needs;

[(5) expand the delivery of mental health services in community-based outpatient clinics of the Department of Veterans Affairs in which such services are not available as of the date of enactment of this Act; and

[(6) expand and improve the Mental Health Intensive Case Management Teams for the treatment and clinical case management of veterans with serious or chronic mental illness.

[(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in each of fiscal years 2006 and 2007, $95,000,000 to improve and expand the treatment services and options available to veterans in need of mental health treatment from the Department of Veterans Affairs, of which—

[(1) $5,000,000 shall be allocated to carry out subsection (a)(1);

[(2) $50,000,000 shall be allocated to carry out subsection (a)(2);

[(3) $10,000,000 shall be allocated to carry out subsection (a)(3);

[(4) $1,000,000 shall be allocated to carry out subsection (a)(4);

[(5) $20,000,000 shall be allocated to carry out subsection (a)(5); and

[(6) $5,000,000 shall be allocated to carry out subsection (a)(6).

**[SEC. 12. DATA SHARING IMPROVEMENTS.**

[Notwithstanding any other provision of law, the Department of Veterans Affairs and the Department of Defense may exchange protected health information for—

[(1) patients receiving treatment from the Department of Veterans Affairs; or

[(2) individuals who may receive treatment from the Department of Veterans Affairs in the future, including all current and former members of the Armed Services.

**[SEC. 13. EXPANSION OF NATIONAL GUARD OUTREACH PROGRAM.**

[(a) REQUIREMENT.—The Secretary of Veterans Affairs shall expand the total number of personal employed by the Department of Veterans Affairs as part of the Readjustment Counseling Service's Global War on Terrorism Outreach Program (referred to in this section as the ''Program'').

[(b) COORDINATION.—In carrying out subsection (a), the Secretary shall coordinate participation in the Program by appropriate employees of the Veterans Benefits Administration and the Veterans Health Administration.

[(c) INFORMATION AND ASSESSMENTS.—The Secretary shall ensure that—

[(1) all appropriate health, education, and benefits information is available to returning members of the National Guard; and

[(2) proper assessments of the needs in each of these areas is made by the Department of Veterans Affairs.

[(d) COLLABORATION.—The Secretary of Veterans Affairs shall collaborate with appropriate State National Guard officials and provide such officials with any assets or services of the Department of Veterans Affairs that the Secretary determines to be necessary to carry out the Global War on Terrorism Outreach Program.

**[SEC. 14. EXPANSION OF TELE-HEALTH SERVICES.**

[(a) IN GENERAL.—The Secretary shall increase the number of Veterans Readjustment Counseling Service facilities capable of providing health services and counseling through tele-health linkages with facilities of the Veterans Health Administration.

[(b) PLAN.—The Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a plan to implement the requirement under subsection (a), which shall describe the facilities that will have such capabilities at the end of each of fiscal years 2005, 2006, and 2007.

**[SEC. 15. MENTAL HEALTH DATA SOURCES REPORT.**

[(a) IN GENERAL.—Not less than 180 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit a report to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives describing the mental health data maintained by the Department of Veterans Affairs.

[(b) CONTENTS.—The report submitted under subsection (a) shall include—

[(1) a comprehensive list of the sources of all such data, including the geographic locations of facilities of the Department of Veterans Affairs maintaining such data;

[(2) an assessment of the limitations or advantages to maintaining the current data configuration and locations; and

[(3) any recommendations, if any, for improving the collection, use, and location of mental health data maintained by the Department of Veterans Affairs.]

***SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE; TABLE OF CONTENTS.***

*(a) SHORT TITLE.—This Act may be cited as the ''Veterans Health Care Act of 2005''.*

*(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment or repeal to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.*

*(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:*

*Sec. 1. Short title; references to title 38, United States Code; table of contents.*
*Sec. 2. Care for newborn children of women veterans receiving maternity care.*
*Sec. 3. Enhancement of payer provisions for health care furnished to certain children of Vietnam veterans.*
*Sec. 4. Improvements to homeless veterans service providers programs.*
*Sec. 5. Additional mental health providers.*
*Sec. 6. Pay comparability for Chief Nursing Officer, Office of Nursing Services.*
*Sec. 7. Repeal of cost comparison studies prohibition.*
*Sec. 8. Improvements and expansion of mental health services.*
*Sec. 9. Data sharing improvements.*
*Sec. 10. Expansion of National Guard Outreach Program.*
*Sec. 11. Expansion of tele-health services.*
*Sec. 12. Mental health data sources report.*
*Sec. 13. Strategic plan for long-term care.*
*Sec. 14. Blind rehabilitation outpatient specialists.*
*Sec. 15. Compliance report.*
*Sec. 16. Health care and services for veterans affected by Hurricane Katrina.*
*Sec. 17. Reimbursement for certain veterans' outstanding emergency treatment expenses.*

***SEC. 2. CARE FOR NEWBORN CHILDREN OF WOMEN VETERANS RECEIVING MATERNITY CARE.***

*(a) IN GENERAL.—Subchapter VIII of chapter 17 is amended by adding at the end the following:*

***''§1786. Care for newborn children of women veterans receiving maternity care***

*''The Secretary may furnish care to a newborn child of a woman veteran, who is receiving maternity care furnished by the Department, for not more than 14 days after the birth of the child if the veteran delivered the child in a Department facility or in another facility pursuant to a Department contract for the delivery services.''.*

*(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1785 the following:*

*''Sec. 1786. Care for newborn children of women veterans receiving maternity care.''.*

***SEC. 3. ENHANCEMENT OF PAYER PROVISIONS FOR HEALTH CARE FURNISHED TO CERTAIN CHILDREN OF VIETNAM VETERANS.***

*(a) HEALTH CARE FOR SPINA BIFIDA AND ASSOCIATED DISABILITIES.—Section 1803 is amended—*

*(1) by redesignating subsection (c) as subsection (d); and*

*(2) by inserting after subsection (b) the following:*

*''(c)(1) If a payment made by the Secretary for health care under this section is less than the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.*

*''(2) The health care provider or agent may not impose any additional charge on the beneficiary who received the health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section.*

*''(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary.*

*''(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.''.*

*(b) HEALTH CARE FOR BIRTH DEFECTS AND ASSOCIATED DISABILITIES.—Section 1813 is amended—*

*(1) by redesignating subsection (c) as subsection (d); and*

*(2) by inserting after subsection (b) the following:*

*''(c)(1) If payment made by the Secretary for health care under this section is less than the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.*

*''(2) The health care provider or agent may not impose any additional charge on the beneficiary who received health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section.*

*''(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary.*

*''(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.''.*

***SEC. 4. IMPROVEMENTS TO HOMELESS VETERANS SERVICE PROVIDERS PROGRAMS.***

*(a) PERMANENT AUTHORITY.—Section 2011 (a) is amended—*

*(1) in paragraph (1), by striking ''(1)''; and*

*(2) by striking paragraph (2).*

*(b) AUTHORIZATION OF APPROPRIATIONS.—*

*(1) COMPREHENSIVE SERVICE PROGRAMS FOR HOMELESS VETERANS.—Section 2013 is amended to read as follows:*

***''§2013. Authorization of appropriations***

*''There are authorized to be appropriated $130,000,000 for fiscal year 2006 and each subsequent fiscal year to carry out this subchapter.''.*

*(2) HOMELESS VETERAN SERVICE PROVIDER TECHNICAL ASSISTANCE PROGRAM.—Section 2064(b) is amended to read as follows:*

*''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 2006 through 2011 to carry out the programs under this section.''.*

***SEC. 5. ADDITIONAL MENTAL HEALTH PROVIDERS.***

*(a) QUALIFICATIONS.—Section 7402(b) is amended—*

*(1) by redesignating paragraph (10) as paragraph (12); and*

*(2) by inserting after paragraph (9) the following:*

*''(10) MARRIAGE AND FAMILY THERAPIST.—To be eligible to be appointed to a marriage and family therapist position, a person shall—*

*''(A) hold a master's degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and*

*''(B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.*

*''(11) LICENSED PROFESSIONAL MENTAL HEALTH COUNSELORS.—To be eligible to be appointed to a licensed professional mental health counselor position, a person shall—*

*''(A) hold a master's degree in mental health counseling, or a related field, from a college or university approved by the Secretary; and*

*''(B) be licensed or certified to independently practice mental health counseling.''.*

*(b) REPORT ON MARRIAGE AND FAMILY THERAPY WORKLOAD.—*

*(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Under Secretary for Health, Department of Veterans Affairs, shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the provisions of post-traumatic stress disorder treatment by marriage and family therapists.*

*(2) CONTENTS.—The report submitted under paragraph (1) shall include—*

*(A) the actual and projected workloads in facilities of the Veterans Readjustment Counseling Service and the Veterans Health Administration for the provision of marriage and family counseling for veterans diagnosed with, or otherwise in need of treatment for, post-traumatic stress disorder;*

*(B) the resources available and needed to support the workload projections described in subparagraph (A);*

*(C) an assessment by the Under Secretary for Health of the effectiveness of treatment by marriage and family therapists; and*

*(D) recommendations, if any, for improvements in the provision of such counseling treatment.*

***SEC. 6. PAY COMPARABILITY FOR CHIEF NURSING OFFICER, OFFICE OF NURSING SERVICES.***

*Section 7404 is amended—*

*(1) in subsection (d), by striking ''subchapter III and in'' and inserting ''subsection (e), subchapter III, and''; and*

*(2) by adding at the end the following:*

*''(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid at a rate not to exceed the maximum rate established for the Senior Executive Service under section 5382 of title 5 United States Code, as determined by the Secretary.''.*

***SEC. 7. REPEAL OF COST COMPARISON STUDIES PROHIBITION.***

*Section 8110(a) is amended—*

*(1) by striking paragraph (5); and*

*(2) by redesignating paragraph (6) as paragraph (5).*

***SEC. 8. IMPROVEMENTS AND EXPANSION OF MENTAL HEALTH SERVICES.***

*(a) FINDINGS.—Congress makes the following findings:*

*(1) Mental health treatment capacity at community-based outpatient clinics remains inadequate and inconsistent, despite the requirement under section 1706(c) of title 38, United States Code, that every primary care health care facility of the Department of Veterans Affairs develop and carry out a plan to meet the mental health care needs of veterans who require such services.*

*(2) In 2001, the minority staff of the Committee on Veterans' Affairs of the Senate conducted a survey of community-based outpatient clinics and found that there was no established systemwide baseline of acceptable mental health service levels at such clinics.*

*(3) In February 2005, the Government Accountability Office reported that the Department of Veterans Affairs had not fully met any of the 24 clinical care and education recommendations made in 2004 by the Special Committee on Post-Traumatic Stress Disorder of the Under Secretary for Health, Veterans Health Administration.*

*(b) CLINICAL SERVICES AND EDUCATION.—*

*(1) IN GENERAL.—The Secretary of Veterans affairs shall—*

*(A) expand the number of clinical treatment teams principally dedicated to the treatment of post-traumatic stress disorder in medical facilities of the Department of Veterans Affairs;*

*(B) expand and improve the services available to diagnose and treat substance abuse;*

*(C) expand and improve tele-health initiatives to provide better access to mental health services in areas of the country in which the Secretary determines that a need for such services exist due to the distance of such locations from an appropriate facility of the Department of Veterans Affairs;*

*(D) improve education programs available to primary care delivery professionals and dedicate such programs to recognize, treat, and clinically manage veterans with mental health care needs;*

*(E) expand the delivery of mental health services in community-based outpatient clinics of the Department of Veterans Affairs in which such services are not available as of the date of enactment of this Act; and*

*(F) expand and improve the Mental Health Intensive Case Management Teams for the treatment and clinical case management of veterans with serious or chronic mental illness.*

*(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $95,000,000 in each of fiscal years 2006 and 2007 to improve and expand the treatment services and options available to veterans in need of mental health treatment from the Department of Veterans Affairs, of which—*

*(A) $5,000,000 shall be allocated to carry out paragraph (1)(A);*

*(B) $50,000,000 shall be allocated to carry out paragraph (1)(B);*

*(C) $10,000,000 shall be allocated to carry out paragraph (1)(C);*

*(D) $1,000,000 shall be allocated to carry out paragraph (1)(D);*

*(E) $20,000,000 shall be allocated to carry out paragraph (1)(E); and*

*(F) $5,000,000 shall be allocated to carry out paragraph (1)(F).*

*(c) REQUIRED CAPACITY FOR COMMUNITY-BASED OUTPATIENT CLINICS.—*

*(1) ACCOUNTABILITY FOR THE PROVISION OF MENTAL HEALTH SERVICES.—The Under Secretary shall take appropriate steps and provide necessary incentives (including appropriate performance incentives) to ensure that each Regional Director of the Veterans Health Administration is encouraged to—*

*(A) prioritize the provision of mental health services to veterans in need of such services;*

*(B) foster collaborative working environments among clinicians for the provision of mental health services; and*

*(C) conduct mental health consultations during primary care appointments.*

*(2) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—*

*(A) IN GENERAL.—The Secretary shall ensure that each community-based outpatient clinic of the Department has the capacity to provide, or monitor the provision of, mental health services to enrolled veterans in need of such services.*

*(B) SETTINGS.—In carrying out subparagraph (A), the Secretary shall ensure that mental health services are provided through—*

*(i) a community-based outpatient clinic of the Department by an employee of the Department;*

*(ii) referral to another facility of the Department;*

*(iii) contract with an appropriate mental health professional in the local community; or*

*(iv) tele-mental health service.*

*(3) REPORTING REQUIREMENT.—Not later than January 31, 2008, the Secretary of Veterans Affairs shall submit a report to Congress that—*

*(A) describes the status and availability of mental health services at community-based outpatient clinics;*

*(B) describes the substance of services available at such clinics; and*

*(C) includes the ratios between mental health staff and patients at such clinics.*

*(d) COOPERATION ON MENTAL HEALTH AWARENESS AND PREVENTION.—*

*(1) AGREEMENT.—The Secretary of Defense and the Secretary of Veterans Affairs shall enter into a Memorandum of Understanding—*

*(A) to ensure that separating service members receive standardized individual mental health and sexual trauma assessments as part of separation exams; and*

*(B) that includes the development of shared guidelines on how to conduct the assessments.*

*(2) ESTABLISHMENT OF JOINT VETERANS AFFAIRS–DEPARTMENT OF DEFENSE WORKGROUP ON MENTAL HEALTH.—*

*(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall establish a joint workgroup on mental health, which shall be comprised of not less than 7 leaders in the field of mental health appointed from their respective departments.*

*(B) STUDY.—Not later than 1 year after the establishment of the workgroup under subparagraph (A), the workgroup shall analyze the feasibility, content, and scope of initiatives related to—*

*(i) combating stigmas and prejudices associated with service members who suffer from mental health disorders or readjustment issues, through the use of peer counseling programs or other educational initiatives;*

*(ii) ways in which the Department of Veterans Affairs can make their expertise in treating mental health disorders more readily available to Department of Defense mental health care providers;*

*(iii) family and spousal education to assist family members of veterans and service members to recognize and deal with signs of potential readjustment issues or other mental health disorders; and*

*(iv) the seamless transition of service members who have been diagnosed with mental health disorders from active duty to veteran status (in consultation with the Seamless Transition Task Force and other entities assisting in this effort).*

*(C) REPORT.—Not later than June 30, 2007, the Secretary of Defense and the Secretary of Veterans Affairs shall submit a report to Congress containing the findings and recommendations of the workgroup established under this paragraph.*

*(e) PRIMARY CARE CONSULTATIONS FOR MENTAL HEALTH.—*

*(1) GUIDELINES.—The Under Secretary for Health, Veterans Health Administration, shall establish systemwide guidelines for screening primary care patients for mental health disorders and illnesses.*

*(2) TRAINING.—Based upon the guidelines established under paragraph (1), the Under Secretary for Health, Veterans Health Administration, shall conduct appropriate training for clinicians of the Department of Veterans Affairs to carry out mental health consultations.*

*(f) CLINICAL TRAINING AND PROTOCOLS.—*

*(1) FINDINGS.—Congress finds that—*

*(A) the Iraq War Clinician Guide has tremendous value; and*

*(B) the Secretary of Defense and the National Center on Post Traumatic Stress Disorder should continue to work together to ensure that the mental health care needs of servicemembers and veterans are met.*

*(2) COLLABORATION.—The National Center on Post Traumatic Stress Disorder shall collaborate with the Secretary of Defense—*

*(A) to enhance the clinical skills of military clinicians through training, treatment protocols, web-based interventions, and the development of evidence-based interventions; and*

*(B) to promote pre-deployment resilience and post-deployment readjustment among servicemembers serving in Operation Iraqi Freedom and Operation Enduring Freedom.*

*(3) TRAINING.—The National Center on Post Traumatic Stress Disorder shall work with the Secretary of Defense to ensure that clinicians in the Department of Defense are provided with the training and protocols developed pursuant to paragraph (2)(A).*

*(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for 2006 to carry out this subsection.*

***SEC. 9. DATA SHARING IMPROVEMENTS.***

*Notwithstanding any other provision of law, the Department of Veterans Affairs and the Department of Defense may exchange protected health information for—*

*(1) patients receiving treatment from the Department of Veterans Affairs; or*

*(2) individuals who may receive treatment from the Department of Veterans Affairs in the future, including all current and former members of the armed services.*

***SEC. 10. EXPANSION OF NATIONAL GUARD OUTREACH PROGRAM.***

*(a) REQUIREMENT.—The Secretary of Veterans Affairs shall expand the total number of personal employed by the Department of Veterans Affairs as part of the Readjustment Counseling Service's Global War on Terrorism Outreach Program (referred to in this section as the ''Program'').*

*(b) COORDINATION.—In carrying out subsection (a), the Secretary shall coordinate participation in the Program by appropriate employees of the Veterans Benefits Administration and the Veterans Health Administration.*

*(c) INFORMATION AND ASSESSMENTS.—The Secretary shall ensure that—*

*(1) all appropriate health, education, and benefits information is available to returning members of the National Guard; and*

*(2) proper assessments of the needs in each of these areas is made by the Department of Veterans Affairs.*

*(d) COLLABORATION.—The Secretary of Veterans Affairs shall collaborate with appropriate State National Guard officials and provide such officials with any assets or services of the Department of Veterans Affairs that the Secretary determines to be necessary to carry out the Global War on Terrorism Outreach Program.*

***SEC. 11. EXPANSION OF TELE-HEALTH SERVICES.***

*(a) IN GENERAL.—The Secretary shall increase the number of Veterans Readjustment Counseling Service facilities capable of providing health services and counseling through telehealth linkages with facilities of the Veterans Health Administration.*

*(b) PLAN.—The Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a plan to implement the requirement under subsection (a), which shall describe the facilities that will have such capabilities at the end of each of fiscal years 2005, 2006, and 2007.*

***SEC. 12. MENTAL HEALTH DATA SOURCES REPORT.***

*(a) IN GENERAL.—Not less than 180 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit a report to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives describing the mental health data maintained by the Department of Veterans Affairs.*

*(b) CONTENTS.—The report submitted under subsection (a) shall include—*

*(1) a comprehensive list of the sources of all such data, including the geographic locations of facilities of the Department of Veterans Affairs maintaining such data;*

*(2) an assessment of the limitations or advantages to maintaining the current data configuration and locations; and*

*(3) any recommendations, if any, for improving the collection, use, and location of mental health data maintained by the Department of Veterans Affairs.*

***SEC. 13. STRATEGIC PLAN FOR LONG-TERM CARE.***

*(a) PUBLICATION.—Not later than 180 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall publish a strategic plan for long-term care.*

*(b) CONTENTS.—The plan published under subsection (a) shall—*

*(1) contain policies and strategies for—*

*(A) the delivery of care in domiciliaries, residential treatment facilities, and nursing homes, and for seriously mentally ill veterans;*

*(B) maximizing the use of State veterans homes;*

*(C) locating domiciliary units as close to patient populations as feasible; and*

*(D) identifying freestanding nursing homes as an acceptable care model;*

*(2) include data on—*

*(A) the care of catastrophically disabled veterans; and*

*(B) the geographic distribution of catastrophically disabled veterans;*

*(3) address the spectrum of noninstitutional long-term care options, including—*

*(A) respite care;*

*(B) home-based primary care;*

*(C) geriatric evaluation;*

*(D) adult day health care;*

*(E) skilled home health care; and*

*(F) community residential care; and*

*(4) provide—*

*(A) cost and quality comparison analyses of all the different levels of care;*

*(B) detailed information about geographic distribution of services and gaps in care; and*

*(C) specific plans for working with Medicare, Medicaid, and private insurance companies to expand care.*

***SEC. 14. BLIND REHABILITATION OUTPATIENT SPECIALISTS.***

*(a) FINDINGS.—Congress makes the following findings:*

*(1) There are approximately 135,000 blind veterans throughout the United States, including approximately 35,000 who are enrolled with the Department of Veterans Affairs. An aging veteran population and injuries incurred in Operation Iraqi Freedom and Operation Enduring Freedom are increasing the number of blind veterans.*

*(2) Since 1996, when the Department of Veterans Affairs hired its first 14 blind rehabilitation outpatient specialists (referred to in this section as ''Specialists'', Specialists have been a critical part of the continuum of care for blind and visually impaired veterans.*

*(3) The Department of Veterans Affairs operates 10 residential blind rehabilitation centers that are considered among the best in the world. These centers have had long waiting lists, with as many as 1,500 blind veterans waiting for openings in 2004.*

*(4) Specialists provide—*

*(A) critically needed services to veterans who are unable to attend residential centers or are waiting to enter such a program;*

*(B) a range of services, including training with living skills, mobility, and adaptation of manual skills; and*

*(C) pre-admission screening and follow-up care for blind rehabilitation centers.*

*(5) There are not enough Specialist positions to meet the increased numbers and needs of blind veterans.*

*(b) ESTABLISHMENT OF SPECIALIST POSITIONS.—Not later than 30 months after the date of enactment of this Act, the Secretary of Veterans Affairs shall establish a Specialist position at not fewer than 35 facilities of the Department of Veterans Affairs.*

*(c) SELECTION OF FACILITIES.—In identifying the most appropriate facilities to receive a Specialist position under this section, the Secretary shall—*

*(1) give priority to facilities with large numbers of enrolled legally blind veterans;*

*(2) ensure that each facility does not have such a position; and*

*(3) ensure that each facility is in need of the services of such Specialists.*

*(d) COORDINATION.—The Secretary shall coordinate the provision of blind rehabilitation services for veterans with services for the care of the visually impaired offered by State and local agencies, especially if such State and local agencies can provide similar services to veterans in settings located closer to the residences of such veterans.*

*(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,500,000 for each of the fiscal years 2006 through 2011.*

***SEC. 15. COMPLIANCE REPORT.***

*Section 1706(b)(5)(A) is amended by striking ''2004'' and inserting ''2006''.*

***SEC. 16. HEALTH CARE AND SERVICES FOR VETERANS AFFECTED BY HURRICANE KATRINA.***

*(a) REQUIREMENT FOR HOSPITAL CARE AND MEDICAL SERVICES FOR PRIORITY 8 VETERANS AFFECTED BY HURRICANE KATRINA.—*

*(1) IN GENERAL.—Notwithstanding any other provision of law and any notwithstanding any previous decisions made by the Secretary of Veterans Affairs pursuant to chapter 17 of title 38 United States Code, the Secretary shall provide necessary medical and health care services to any veteran affected by Hurricane Katrina as if such veteran was enrolled for care under section 1705 of title 38, United States Code.*

*(2) STATUS OF VETERANS.—For purposes of managing the health care system, as required under section 1705 of title 38, United States Code, a veteran who seeks care under paragraph (1) shall not be considered to be an enrollee of the health care system under such section unless the Secretary subsequently designates such a veteran as such an enrollee.*

*(b) PROHIBITION ON COLLECTION OF COPAYMENTS FOR VETERANS AFFECTED BY HURRICANE KATRINA.—In furnishing hospital care and medical services to any veteran affected by Hurricane Katrina, the Secretary shall not collect from, or with respect to, such veteran any payment for such care and services otherwise required under any provision of law, including any copayment for medications otherwise required under section 1722A of title 38, United States Code.*

*(c) DEFINITION.—In this section, the term ''veteran affected by Hurricane Katrina'' means any veteran who, as of August 29, 2005, resided in the catchment region of the Department of Veterans Affairs medical center in—*

*(1) New Orleans, Louisiana;*

*(2) Biloxi, Mississippi; or*

*(3) Gulfport, Mississippi.*

*(d) SUNSET PROVISION.—The authority under this section shall expire on January 31, 2006.*

***SEC. 17. REIMBURSEMENT FOR CERTAIN VETERANS' OUTSTANDING EMERGENCY TREATMENT EXPENSES. .***

*(a) IN GENERAL.—Subchapter III of chapter 17 is amended by inserting after section 1725 the following:*

***''§ 1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable***

*''(a)(1) Subject to subsection (c), the Secretary may reimburse a veteran described in subsection (b) for expenses resulting from emergency treatment furnished to the veteran in a non-Department facility for which the veteran remains personally liable.*

*''(2) In any case in which reimbursement is authorized under subsection (a)(1), the Secretary, in the Secretary's discretion, may, in lieu of reimbursing the veteran, make payment—*

*''(A) to a hospital or other health care provider that furnished the treatment; or*

*''(B) to the person or organization that paid for such treatment on behalf of the veteran.*

*''(b) A veteran referred to in subsection (a) is an individual who—*

*''(1) is enrolled in the health care system established under section 1705(a) of this title;*

*''(2) received care under this chapter during the 24-month period preceding the furnishing of such emergency treatment;*

*''(3) is entitled to care or services under a health-plan contract that partially reimburses the cost of the veteran's emergency treatment;*

*''(4) is financially liable to the provider of emergency care treatment for costs not covered by the veteran's health-plan contract, including copayments and deductibles; and*

*''(5) is not eligible for reimbursement for medical care or services under section 1725 or 1728 of this title.*

*''(c)(1) Any amount paid by the Secretary under subsection (a) shall exclude the amount of any payment the veteran would have been required to make to the United States under this chapter if the veteran had received the emergency treatment from the Department.*

*''(2) The Secretary may not provide reimbursement under this section with respect to any item or service—*

*''(A) provided or for which payment has been made, or can reasonably be expected to be made, under the veteran's health-plan contract; or*

*''(B) for which payment has been made or can reasonably be expected to be made by a third party.*

*''(3)(A) Payment by the Secretary under this section on behalf of a veteran to a provider of emergency treatment shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish any liability on the part of the veteran for that treatment.*

*''(B) The absence of a contract or agreement between the Secretary and the provider, any provision of a contract or agreement, or an assignment to the contrary shall not operate to*

*modify, limit, or negate the requirement under subparagraph (A).*

*''(4) In accordance with regulations prescribed by the Secretary, the Secretary shall—*

*''(A) establish criteria for determining the amount of reimbursement (which may include a maximum amount) payable under this section; and*

*''(B) delineate the circumstances under which such payment may be made, including requirements for requesting reimbursement.*

*''(d)(1) In accordance with regulations prescribed by the Secretary, the United States shall have the independent right to recover any amount paid under this section if, and to the extent that, a third party subsequently makes a payment for the same emergency treatment.*

*''(2) Any amount paid by the United States to the veteran, the veteran's personal representative, successor, dependents, or survivors, or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.*

*''(3) Any amount paid by the United States to the provider that furnished the veteran's emergency treatment shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.*

*''(4) The veteran or the veteran's personal representative, successor, dependents, or survivors shall—*

*''(A) ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran;*

*''(B) immediately forward all documents relating to a payment described in subparagraph (A);*

*''(C) cooperate with the Secretary in an investigation of a payment described in subparagraph (A); and*

*''(D) assist the Secretary in enforcing the United States right to recover any payment made under subsection (c)(3).*

*''(e) The Secretary may waive recovery of a payment made to a veteran under this section that is otherwise required under subsection (d)(1) if the Secretary determines that such waiver would be in the best interest of the United States, as defined by regulations prescribed by the Secretary.*

*''(f) For purposes of this section—*

*''(1) the term 'health-plan contract' includes—*

*''(A) an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement, under which health services for individuals are provided or the expenses of such services are paid;*

*''(B) an insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of that Act (42 U.S.C. 1395j);*

*''(C) a State plan for medical assistance approved under title XIX of such Act (42 U.S.C. 1396 et seq.); and*

*''(D) a workers' compensation law or plan described in section 1729(A)(2)(B) of this title;*

*''(2) the term 'third party' means—*

*''(A) a Federal entity;*

*''(B) a State or political subdivision of a State;*

*''(C) an employer or an employer's insurance carrier; and*

*''(D) a person or entity obligated to provide, or pay the expenses of, such emergency treatment; and*

*''(3) the term 'emergency treatment' has the meaning given such term in section 1725 of this title.''.*

*(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1725 the following:*

*''Sec. 1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable.''.*

Mr. FRIST. Mr. President, I ask unanimous consent that the amendment at the desk be agreed to, the committee-reported amendment, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD, all en bloc.

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

The amendment (No. 2694) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee-reported amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 1182), as amended, was read the third time and passed.

## WAIVER OF PASSPORT FEES FOR A RELATIVE OF A DECEASED MEMBER OF THE ARMED FORCES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 279, S. 1184.

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

The legislative clerk read as follows:

A bill (S. 1184) to waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I further ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to this measure be printed in the RECORD.

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

The bill (S. 1184) was read the third time and passed, as follows:

S. 1184

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

**SECTION 1. PASSPORT FEES.**

Section 1 of the Act of June 4, 1920 (41 Stat. 750, chapter 223; 22 U.S.C. 214) is amended in the third sentence by striking ''or from a widow, child, parent, brother, or sister of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member'' and inserting ''or from a widow, widower, child, parent, grandparent, brother, or sister of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member''.

## MAKING TECHNICAL CORRECTIONS IN AMENDMENTS MADE BY THE ENERGY POLICY ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4637, which was received from the House.

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

The legislative clerk read as follows:

A bill (H.R. 4637) to make certain technical corrections in amendments made by the Energy Policy Act of 2005.

There being no objection, the Senate proceeded to consider the bill.

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

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

The bill (H.R. 4637) was read the third time and passed.

## REAUTHORIZING THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT PROGRAM

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4635, which was received from the House.

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

The legislative clerk read as follows:

A bill (H.R. 4635) to reauthorize the Temporary Assistance for Needy Families block grant program through March 31, 2006, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

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

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

The bill (H.R. 4635) was read the third time and passed.

## FEDERAL DEPOSIT INSURANCE REFORM CONFORMING AMENDMENTS ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4636, which was received from the House.

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

The legislative clerk read as follows:

A bill (H.R. 4636) to enact the technical and conforming amendments necessary to implement the Federal Deposit Insurance Reform Act of 2005, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

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

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

The bill (H.R. 4636) was read the third time and passed.

## JUNIOR DUCK STAMP REAUTHORIZATION AMENDMENTS ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3179, which was received from the House.

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

The legislative clerk read as follows:

A bill (H.R. 3179) to reauthorize and amend the Junior Duck Stamp Conservation and Design Program Act of 1994.

There being no objection, the Senate proceeded to consider the bill.

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

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

The bill (H.R. 3179) was read the third time and passed.

## SECURING AIRCRAFT COCKPITS AGAINST LASERS ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1400, which was received from the House.

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

The legislative clerk read as follows:

A bill (H.R. 1400) to amend title 18, United States Code, to provide penalties for aiming laser pointers at airplanes, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

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

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

The amendment (No. 2695) was agreed to, as follows:

(Purpose: To provide exceptions for FAA research, Department of Defense activities, and use of signaling devices in emergencies)

Strike out all after the enacting clause and insert the following:

**SECTION 1. PROHIBITION AGAINST INTERFERING WITH FLIGHT CREWS THROUGH USE OF LASER POINTERS OR SIMILAR DEVICES.**

(a) IN GENERAL.—Chapter 465 of title 49, United States Code, is amended by adding at the end the following:

**"§ 46508. Interference with flight crew vision**

''(a) IN GENERAL.—An individual who interferes with, or attempts to interfere with, the ability of the flight crew of an aircraft in flight to see, or otherwise to impair the safe operation of an aircraft in flight, by illuminating the aircraft with a laser pointer or similar device shall be fined under title 18, imprisoned for not more than 5 years, or both.

''(b) EXCEPTIONS.—Subsection (a) does not apply to the illumination of aircraft by laser or other devices by—

''(1) an authorized individual in the conduct of research and development or flight test operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other person authorized by the Federal Aviation Administration to conduct such research and development or flight test operations;

''(2) members or elements of the Department of Defense acting in an official capacity for the purpose of research, development, operations, testing or training; or

''(3) by an individual using a laser emergency signaling device to send an emergency distress signal.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 465 of title 49, United States Code, is amended by adding at the end the following:

''46508. Interference with flight crew vision.''.

The bill (H.R. 1400), as amended, was read the third time and passed.

## PASSPORT SERVICES ENHANCEMENT ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4501, which was received from the House.

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

The legislative clerk read as follows:

A bill (H.R. 4501) to amend the Passport Act of June 4, 1920, to authorize the Secretary of State to establish and collect a surcharge to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004.

There being no objection, the Senate proceeded to consider the bill.

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

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

The bill (H.R. 4501) was read the third time and passed.

## TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 972, which was received from the House.

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

The legislative clerk read as follows:

A bill (H.R. 972) to authorize appropriations for fiscal years 2006 and 2007 for the Trafficking Victims Protection Act of 2000, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I support reauthorization of the Trafficking Victims Protection Act of 2000. This legislation was championed by my dear friend Senator Paul Wellstone. I supported him then and when it was reauthorized in 2003, and I continue to support this effort. It is part of his extraordinary legacy. The people of Minnesota, the Senate, the Nation and the world suffered a great loss when we lost Paul Wellstone.

The United States has long played a leading role in the international community in combating these heinous crimes, and furthered its efforts by enacting the Trafficking Victims Protection Act of 2000 and reauthorizing the law in 2003. This reauthorization confirms our commitment to effectively and successfully combating this horrific problem by combining tough law enforcement strategies with important safeguards and services for victims.

Information about severe cases of human trafficking will continue to be provided in the annual State Department Country Report for each foreign country, in a continued effort to raise awareness about this issue. In addition, the Inter-Agency Task Force will continue to monitor trafficking by providing annual and interim reports on countries whose governments do not comply with the minimum standards. Efforts to establish initiatives to enhance economic opportunities for potential trafficking victims, including training and education programs, will also continue.

I am especially pleased that this reauthorization package has been improved significantly. For the first time, the bill focuses not only on the important goal of preventing international human trafficking, but also on preventing the human trafficking that occurs within our own borders. Children here in the United States are at tremendous risk, especially those who are homeless or runaways, and they are particularly susceptible to being domestically trafficked for purposes of commercial sexual exploitation. I will not rest until this alarming trend is stopped.

Over the last 30 years, I have worked with my colleagues to write and enact legislation aimed at protecting children and assisting victims. In the last Congress, Senator HATCH and I joined forces to introduce the PROTECT Act, which provided prosecutors and law enforcement with tools necessary to combat child pornography and human trafficking. The final legislation signed into law included a number of provisions I had also either authored or strongly supported, including: The National AMBER Alert Network Act; the Protecting Our Children Comes First Act, which reauthorized funding for the National Center for Missing and Exploited Children; and legislation to amend the Violence Against Women Act to provide transitional housing assistance grants for child victims of domestic violence.

As a father and a grandfather, I cannot think of any more important responsibility than our responsibility to protect the most vulnerable amongst us—our children. I recognize that more needs to be done, and I will continue to explore new ways to combat human

trafficking. Although our work is far from finished, the reauthorization of the Trafficking Victims Protection Act is another important step in the right direction.

Mr. BROWNBACK. Mr. President, when our Nation recently celebrated the life of Rosa Parks, we were reminded that the walk to justice is a long one. Her life reminded us that justice starts with individuals standing up for what is right; but also that the struggle does not quickly end until we faithfully finish the task. Likewise, while we have made a good start in our efforts to address the global crime of human trafficking, the millions of victims who still suffer in slavery today are urgently looking to see if we will finish as well as we have started.

I am pleased to say that the passage of the Trafficking Victims' Protection Reauthorization Act is one more step in that direction.

Each year, it is estimated that at least 800,000 human beings are trafficked across national borders. They are bought and sold in the sex industry as prostitutes, or forced into domestic servitude. Recent estimates on the number of victims trafficked into the United States range from 20,000 to 40,000 per year. Most of these victims are women and young children who languish in brothels, being raped and abused by the traffickers and their clients. An estimated 27 million human beings worldwide suffer from some form of slavery and forced labor.

The late Senator Paul Wellstone and his wife Sheila were passionately devoted to the issue of trafficking and to assisting countless victims. I will always remember their courageous fight in addressing modern-day slavery.

Senator Wellstone and I teamed up in the Senate and were able to see the Trafficking Victims Protection Act of 2000 signed into law. Some called us strange bedfellows, but the wide political and religious spectrum that supported our efforts were a clear reminder that this is not a partisan issue.

While Paul Wellstone is no longer here to carry the torch, I am pleased that other colleagues from across party lines have worked to make a difference by uniting under the common principle of freedom.

''The Victims of Trafficking Protection Act,'' Public Law 106–386, established a monitoring system and sanctions for countries that fail to take minimal efforts to combat trafficking. ''The PROTECT Act,'' Public Law 108–21, made it a crime for any person traveling abroad or entering into the United States to do so for sex tourism involving children. The Trafficking Victims Protection Reauthorization Act of 2003, Public Law 108–193, established a Senior Policy Operating Group within the executive branch to coordinate sound policies between interagency departments. These measures have brought about both deep understanding and awareness and much needed laws to protect and combat against trafficking.

I congratulate Congressman CHRIS SMITH and my colleagues in the House for their tireless devotion to this issue and the passage of the 2005 reauthorization legislation.

The bill reauthorizes ongoing programs of the Department of State, U.S. Agency for International Development, Department of Justice, Department of Homeland Security, Department of Health and Human Services, and Department of Labor to combat trafficking in persons for fiscal years 2006 and 2007. Additionally, it authorizes new funds to the FBI for domestic and international investigations of acts of severe forms of trafficking in persons, as well as grants to State and local law enforcement for the investigation and prosecution of acts of severe forms of trafficking in persons involving domestic victims of trafficking.

For the first time, we have authorized new programs to reduce the demand for commercial sex in the United States and prevent trafficking of U.S. citizens through the creation of grant programs for States and local law enforcement.

As a result of last year's tsunami, the legislation incorporates child protection and trafficking prevention activities into USAID, State, and DOD post-conflict and post-natural disaster relief programs. In addition, given recent sex scandals within peacekeeping missions, this bill aims to strengthen efforts to combat sexual exploitation and trafficking in persons by peacekeepers.

Finally, the bill authorizes studies on the linkage between trafficking and terrorism and trafficking and HIV/AIDS, as well as requires a worldwide report on steps taken to prevent and eliminate the abduction and enslavement of children for use as soldiers.

I would also like to applaud the work of the Trafficking in Persons Office at the State Department. Through their sustained diplomatic efforts, countries around the world are signing into law provisions that prevent and punish human trafficking. Even in the United States, we have places like the Kansas Legislature working on legislation to combat human trafficking. It is a true testament to the strides that we have made in ending modern-day slavery and I hope other states and nations around the world will also consider taking action against this type of organized crime.

I am driven by the conviction that every individual counts. This principle comprises the heart of the democratic form of government. It is based on a belief in the universal nature of human rights and a commitment to the dignity of every human life. Addressing modern-day slavery is driven by that very conviction.

Rosa Parks' remarkable story tells us that the walk to freedom has to begin somewhere—but also that such a walk is a long one. And for the journey we take encouragement from the assurances of a Baptist pastor who went to jail with Rosa Parks. ''The moral arc of the universe is long,'' said Dr. King, ''but it bends toward justice.''

Mr. BIDEN. Mr. President, in March of this year, I—along with Senator LUGAR—introduced S. 559, the Protection of Vulnerable Populations During Humanitarian Emergencies Act of 2005, a bill to make vulnerable people, especially women and children, a priority of our foreign assistance programs. The Committee on Foreign Relations approved the bill in March as part of its omnibus authorization bill, S. 600. Unfortunately, S. 600 was pulled from floor consideration in April, and remains stalled.

In the last few days, I have attempted to add the provisions of S. 559 as an amendment to H.R. 972, the Trafficking Victims Protection Act, which was approved by the other body just last week. I support the trafficking bill, which addresses a serious problem in many parts of the world, including this country. I have been told, however, by my friends on the other side of the aisle that my amendment is not acceptable at this time. Several reasons have been given, foremost among them that it will unduly delay enactment of the trafficking bill, because the other body has essentially closed up shop for the year.

But as my colleagues know we have another problem—victims of sexual exploitation and abuse who are not trafficked—such as those who are forced to seek sanctuary in refugee or internally displaced camps. The trafficking bill deals with people who are trafficked from those camps. But it does not address the need to protect those left behind.

Last May, I visited a refugee camp in Chad where nearly 30,000 refugees from Darfur had settled. I have seen and heard the problems they are facing first hand.

Over the last 2 years, civilians have been targeted by Khartoum in one of the most horrific genocides the world has ever seen. Villages have been bombed, government-sponsored militia have destroyed crops and have fouled the water supply. They have burned homes, leaving mothers no choice but to flee for their lives and their children's lives.

Civilians forced to flee during war find their way to camps, but instead of relative safety, what do they find? They find more suffering. The camps become virtual prisons. Women and girls are beaten and raped if they venture outside the camps for firewood.

Sudan is not the only part of the world where such travesties are occurring. A report by a United Nations investigatory team released earlier this year states that a number of U.N. peacekeepers—U.N. peacekeepers, mind you—deployed to protect civilians from ethnic violence in the eastern Democratic Republic of Congo were sexually exploiting girls as young as 13 years old. The peacekeepers were asking

these children for sex in exchange for small sums of money or food. And the report found that the abuse continued even while UN investigators were on the ground.

Reading that report and others reinforced my belief that we cannot stand by any longer. More must be done, and S. 559 provides an important framework to do so.

I firmly believe that the objective of my legislation is entirely consistent with the objectives of the trafficking bill—to protect vulnerable people, whether they are trafficked from one country to another, or left behind in a refugee camp.

It enhances the U.S. Government's ability to see that women and children are protected before, during, and after a complex humanitarian emergency. It directs the Secretary of State to designate a special coordinator for protection issues who will be charged with making sure our embassies are made aware of the warning signs that an emergency which may put the lives and safety of women and children at risk is imminent.

It directs the coordinator to compile a watch list of such countries and regions so that the Agency for International Development can plan to meet potential need for protection programs. It prohibits U.S. funding for relief agencies that do not sign a code of conduct that outlaws improper exploitative relationships between aid workers and recipients.

It calls upon the United States Executive Director of the International Bank of Reconstruction and Development to try to make sure World Bank demobilization, disarmament, and reintegration programs extend the same benefits provided to ex-combatants to the women and children who were associated with them.

As it now stands, women and children who were used as cooks and porters and so-called ''wives,'' a euphemism for women who were kidnaped to serve as sexual slaves, may well not be given benefits through these programs—nothing with which to rebuild their lives despite the fact that they were not there by choice. Yet the very people who forced them into such conditions receive assistance without conditions.

Finally, it amends the Foreign Assistance Act to authorize programs and activities specifically aimed at making vulnerable people—especially women and children—who are affected by humanitarian emergencies safer from further exploitation and abuse.

In recent days, some supporters of the trafficking bill have suggested my bill is about abortion. My response is this: my bill has nothing to do with abortion, but I am willing to make any changes that are necessary to make clear that abortion-related restrictions in foreign aid laws are not affected.

I sincerely hope that people who have a legitimate sense of moral outrage about victims of trafficking will support my objectives and work with me to pass my bill early next year. The Senator from Kansas, Senator BROWNBACK, who is one of the chief sponsors in the Senate of the trafficking bill, has pledged to work with me on approval of S. 559. I am grateful to him for that commitment.

In the meantime, I am pleased that today the Senate will approve the Trafficking in Persons legislation and it will proceed to the President. It is a very important bill and I commend the sponsors in both chambers for their good work.

Mr. CORNYN. Mr. President, I rise today to speak about the Trafficking Victims Protection Reauthorization Act approved by the House on Thursday, December 15. This legislation increases the Government's ability to combat human trafficking and provides greater protective measures for victims of this deplorable crime. I thank my colleagues in the House for working on this legislation in an expedited fashion, and for their leadership in responding to these challenges.

The Trafficking Victims Protection Reauthorization Act includes language from the End Demand for Sex Trafficking Act of 2005, a bill that I introduced earlier this year. That bill is important because it expresses Congress' commitment to reduce U.S. domestic demand for sex trafficking—which disproportionately victimizes women and children. It incorporates more stringent provisions to penalize human traffickers, and it enhances protective measures for the victims of trafficking crimes.

This is accomplished by establishing Federal grants which could be used to focus on prosecution efforts. In addition, it strengthens and clarifies Federal criminal law, making it easier to prosecute those who transport persons who are then used for prostitution across State lines. And it includes an important oversight element: the Attorney General will be required to release an annual report on best practices for reducing the demand for unlawful commercial sex.

The Thirteenth Amendment to the Constitution states: ''Neither slavery nor involuntary servitude . . . shall exist within the United States, or any place subject to their jurisdiction.'' This provision is unique to our Constitution. Many constitutional amendments protect individual rights against actions by Federal, State, and local governments. But the Thirteenth Amendment is unique because it provides that slavery and involuntary servitude cannot exist—neither in public nor private spheres.

Yet, even to this day, men, women, and children are trafficked into the United States and coerced into lives ravaged by forced labor and sexual slavery.

I join the administration in commending the House International Relations and Judiciary Committees who joined me to address this important issue. Indeed, this bill lays out the terrible facts: as many as 800,000 human beings are literally bought and sold worldwide into some form of slavery or involuntary servitude—approximately 80 percent are women and girls and up to 50 percent are children. Roughly 16,000 of those human beings are brought into the United States each year, coerced into lives of forced labor or sexual servitude which, of course, is slavery.

The fact is the current administration has responded to the call by dramatically increasing efforts devoted to providing substantially more resources to combat human trafficking. This has been done principally under the auspices of the civil rights division at the Justice Department. The Department has initiated more than three times the number of trafficking investigations, filed almost four times as many of these cases. and doubled the number of defendants convicted for these heinous crimes than in the prior 4-year period.

Mr. President, I am pleased this important piece of legislation has passed, and look forward to working with my colleagues on this very important issue in the future.

Mr. DURBIN. Mr. President, I rise to support passage of the Trafficking Victims Protection Reauthorization Act of 2005.

This law will help continue the progress in fighting the insidious global practice of trafficking in human beings. It is estimated that nearly a million people are trafficked across international borders each year and pressed into labor or servitude by the use of force, fraud, or coercion. Human trafficking represents the commerce in human misery.

Today we reauthorize a bill that was passed and signed into law in October 2000. In doing so, we honor one of the great champions of that bill—the late Senator Paul Wellstone. Senator Wellstone's commitment to combating human trafficking and other human rights abuses stands as one of his most enduring legacies. The Senate and the Nation miss his courage, passion, and leadership on this issue and so many others.

The passage of today's bill is also a tribute to the tireless advocacy of one of my constituents, Oprah Winfrey. She has helped put a spotlight on the tragedy of human trafficking, and she has been a powerful and eloquent voice for those who are silenced by oppression.

Human trafficking is most prevalent in foreign lands, but the U.S. Government has estimated that over 10,000 people are trafficked into the United States every year. In my own State of Illinois, for example, a Russian trafficker was prosecuted in 2002 for forcing several women from Latvia to work in Chicago-area strip clubs. The State of Illinois has risen to the challenge. This past summer, Illinois Governor

Rod Blagojevich signed a law that provides more legal tools for State prosecutors and more protections for trafficking victims.

The Trafficking Victims Protection Reauthorization Act of 2005 will help combat human trafficking throughout the Nation and around the globe. It extends the provisions given to Federal law enforcement in 2000 to prosecute traffickers, protect victims, and prevent future abuses.

And it will allow our government to continue holding other nations accountable for their efforts to combat human trafficking abroad. I have discussed this issue with Ambassador John Miller, a former member of Congress who is now the director of the State Department's Office to Monitor and Combat Trafficking in Persons. I am pleased that the number of countries to whom the State Department has given a failing grade—so-called ''Tier 3'' countries—has dropped from 27 in 2001 to 14 in 2005.

Earlier this month, we commemorated the International Day for the Abolition of Slavery. On this occasion, U.N. Secretary-General Kofi Annan said:

> The world is now wrestling with a new form of slavery—trafficking in human beings, in which many vulnerable people are virtually abandoned by legal and social systems into a sordid realm of exploitation and abuse. People who perpetrate, condone or facilitate slavery or slavery-like practices must be held accountable by national and, if necessary, international means. The international community must also do more to combat poverty, social exclusion, illiteracy, ignorance and discrimination, which increase vulnerability and are part of the underlying context for this scourge.

By passing the Trafficking Victims Protection Reauthorization Act of 2005, we are heeding the advice of Kofi Annan and carrying the torch of Paul Wellstone.

Mrs. CLINTON. I rise today to speak in support of the reauthorization of the Trafficking Victims Protection Act.

The scourge of trafficking in women and children was a priority for me as First Lady and continues to be a priority for me as a U.S. Senator. Since the United Nations Fourth World Conference on Women in 1995, I have been working to raise awareness of the heinous practice of buying and selling women and children like commodities. I have seen the devastation that it causes, and the lives it ruins. I have met with the families from Eastern and Central Europe, who, with tears in their eyes, pleaded with me to help them find lost ones who had been stolen from them, and I have met with the victims, including a 12-year-old girl in Thailand who was dying of AIDS after being sold twice by her family. This barbaric practice has caused far too many to exist in a perpetual state of fear and vulnerability, and we must do everything in our power to bring the scourge of trafficking out of the shadows and to the attention of the world.

I am proud to say that the United States has, for the past decade, been the leader in trying to persuade the rest of the world to eradicate this abhorrent practice. As the Clinton administration increased the anti-trafficking activities of our Government through programs at the State Department and the Department of Justice, Congress was developing legislation to eradicate trafficking. We worked with the late Senator Wellstone, his Republican cosponsor, Senator BROWNBACK, and Congressman CHRIS SMITH and former Congressman Sam Gejdenson in the House, to introduce the first comprehensive anti-trafficking bill in Congress. This culminated in the passage of the Victims of Trafficking and Violence Protection Act of 2000. I believed then, and I believe now, that this is one of the Clinton administration's greatest achievements and one of the most important parts of Senator Wellstone's legacy. That law has meant the difference between freedom and enslavement for unknown numbers of potential trafficking victims, and this reauthorization provides us with the opportunity to strengthen its ability to help those who have been trafficked, and I would like to thank Senator BROWNBACK and Representative SMITH, my colleagues on the Helsinki Commission, for their continued commitment to this act since its initial passage.

I am proud to see that this reauthorization enhances the 3 P's strategy—prevention of trafficking, prosecution of those that engage in these acts, and protection of the vulnerable individuals who have been trafficked—that we developed in the Clinton administration. It gives the Justice Department the authority to pursue extraterritorial prosecutions of Federal employees or those accompanying them if they engage in trafficking activities. It encourages the prevention of trafficking by requiring organizations or contractors engaged in U.S.-supported peacekeeping efforts to have antitrafficking policies in place. And it will protect those who have been trafficked overseas by increasing funding for programs like residential treatment facilities.

But there is still so much work to be done. Although reliable statistics are difficult to find, we know that 800,000 individuals—the vast majority of whom are women and children—are trafficked from one country to another every year, with 15,000 being trafficked to the United States. The FBI estimates that trafficking generates $9.5 billion annually for organized crime syndicates around the world.

I am deeply concerned about the growing domestic commercial sex trade, and I believe that we need to increase funding and target efforts to end all forms of exploitation. Any expansion of our focus must not dilute our commitment to eradicating human trafficking in all its forms in the United States, nor detract from the progress we have made in increasing prosecutions and working with law enforcement agencies. We must ensure that our Government has all the resources it needs to make inroads against these awful acts on our own soil.

In the fight against trafficking in persons, patience simply is not an option. I look forward to continuing to work with my colleagues to end this barbaric practice in both the United States and around the world, because this is not about politics, but about what we all share: universal freedom and universal human rights.

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

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

The bill (H.R. 972) was read the third time and passed.

## TO AMEND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4579, which was received from the House.

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

The legislative clerk read as follows:

> A bill (H.R. 4579) to amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to extend by one year provisions requiring parity in the application of certain limits to mental health benefits.

There being no objection, the Senate proceeded to consider the bill.

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

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

The bill (H.R. 4579) was read the third time and passed.

## TORTURE VICTIMS RELIEF REAUTHORIZATION ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2017, which was received from House.

The clerk will state the bill by title.

The legislative clerk read as follows:

> A bill (H.R. 2017) to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign programs and centers for the treatment of victims of torture, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the

table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 2017) was read the third time and passed.

## SECOND HIGHER EDUCATION EXTENSION ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4525, which was received from the House.

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

The legislative clerk read as follows:

A bill (H.R. 4525) to temporarily extend the programs under the Higher Education Act of 1965, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

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

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

The bill (H.R. 4525) was read the third time and passed.

## UNANIMOUS CONSENT AGREEMENT—H. CON. RES. 326

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of H. Con. Res. 326, the adjournment resolution; provided that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table. I further ask unanimous consent that action on the resolution be vitiated if the House does not adopt S. Con. Res. 74.

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

The concurrent resolution (H. Con. Res. 326) was agreed to, as follows:

H. CON. RES. 326

*Resolved by the House of Representatives (the Senate concurring)*, That when the House adjourns on any legislative day from Sunday, December 18, 2005, through Saturday, December 24, 2005, or from Monday, December 26, 2005, through Saturday, December 31, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die or until the time of any reassembly pursuant to section 3 of this concurrent resolution; and when the Senate adjourns on any day from Monday, December 19, 2005, through Saturday, December 24, 2005, or from Monday, December 26, 2005, through Saturday, December 31, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die or until the time of any reassembly pursuant to section 3 of this concurrent resolution.

SEC. 2. When the House adjourns on any legislative day of the second session of the One Hundred Ninth Congress from Tuesday, January 3, 2006, through Saturday, January 28, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it shall stand adjourned until noon on Tuesday, January 31, 2006, or until the time of any reassembly pursuant to section 3 of this concurrent resolution, whichever occurs first; when the Senate recesses or adjourns on any day of the second session of the One Hundred Ninth Congress from Tuesday, January 3, 2006, through Monday, January 16, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it shall stand recessed or adjourned until noon on Wednesday, January 18, 2006, or until such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 3 of this concurrent resolution, whichever occurs first; and when the Senate recesses or adjourns on any day from Friday, January 20, 2006, through Saturday, January 28, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it shall stand recessed or adjourned until noon on Tuesday, January 31, 2006, or until such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 3 of this concurrent resolution, whichever occurs first.

SEC. 3. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate if, in their opinion, the public interest shall warrant it.

## CONDITIONAL ADJOURNMENT OF THE HOUSE AND SENATE

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment sine die under the provisions of H. Con. Res. 326, and when the Senate reconvenes at 12 noon on January 3, it be for a pro forma session only, and that no business be in order and the Senate then automatically adjourn until 10 a.m. on January 18 as under the provisions of that resolution, or until 8 p.m. on December 22 if the House does not adopt S. Con. Res. 74. I further ask that on whichever day the Senate reconvenes, following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, and the time for the two leaders be reserved, and then the Senate proceed to a period of morning business.

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

## THANKING THE STAFF AND PAGES

Mr. FRIST. Mr. President, as we bring this first session of the 109th Congress to a close, I once again thank my colleagues, the staff, the pages, and everyone who contributes so much to our work in this Chamber.

I want to give a special thanks to the few pages we have remaining this evening. Most of them have gone back home to their families, and we have a few volunteers who stayed behind. They are instrumental in allowing us to carry out our work each day. It is very rare that we actually say thank you. I want to take this opportunity to say thank you for volunteering to be with us over what has been a pretty long last couple of days. So I thank Rafi Bortnick, Katie Rember, and Dan Tinsley.

I wish everyone a Merry Christmas and a happy and healthy holiday season. I hope that everyone does get some rest and spends some time with family and friends and neighbors and others in their communities and returns back here in January ready to roll up your sleeves and continue right where we left off.

## ADJOURNMENT UNTIL DECEMBER 22, 2005 OR JANUARY 3, 2006

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 12:13 a.m., adjourned until Thursday, December 22, 2005, at 8 p.m. or Tuesday, January 3, 2006.

## NOMINATIONS

Executive nominations received by the Senate December 21, 2005:

### DEPARTMENT OF ENERGY

ALEXANDER A. KARSNER, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF ENERGY (ENERGY EFFICIENCY AND RENEWABLE ENERGY), VICE DAVID GARMAN.

### TENNESSEE VALLEY AUTHORITY

SUSAN RICHARDSON WILLIAMS, OF TENNESSEE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR A TERM EXPIRING MAY 18, 2007. (NEW POSITION)

DONALD R. DEPRIEST, OF MISSISSIPPI, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR A TERM EXPIRING MAY 18, 2009. (NEW POSITION)

HOWARD A. THRAILKILL, OF ALABAMA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR THE TERM PRESCRIBED BY LAW, VICE GLENN L. MCCULLOUGH, JR., RESIGNED.

### CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

VINCE J. JUARISTI, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM EXPIRING FEBRUARY 8, 2009, VICE LESLIE LENKOWSKY, TERM EXPIRED.

### IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5721:

*To be lieutenant commander*

CHRISTOPHER P. BOBB, 0000
BRUCE J. CICCONE, JR., 0000
CHAD J. CONEWAY, 0000
DAVID COX, 0000
DENNIS M. DAVIS, 0000
RICHARD A. DEHAVEN, 0000
MICHAEL J. DONIGER, 0000
DAVID L. EDGERTON, 0000
RANDALL I. FEHER, 0000
JEFFREY L. HEAMES, 0000
BRIAN P. HOGAN, 0000
JONATHAN S. HOLMGREN, SR., 0000
NOMER F. JAVIER, 0000
MICHAEL D. JOHNSON, 0000
CHARLES O. JONES, 0000
DAVID R. KINNEY, 0000
BRIAN S. ONEILL, 0000
JEFFREY D. ORBERSON, 0000
VINCENT J. WOOD, 0000

## CONFIRMATIONS

Executive nominations confirmed by the Senate, Wednesday, December 21, 2005:

DEPARTMENT OF THE INTERIOR

R. THOMAS WEIMER, OF COLORADO, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

VINCENT J. VENTIMIGLIA, JR., OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be brigadier general*

COL. DONALD M. BRADSHAW

THE JUDICIARY

JOSEPH FRANK BIANCO, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK.

TIMOTHY MARK BURGESS, OF ALASKA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ALASKA.

GREGORY F. VAN TATENHOVE, OF KENTUCKY, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY.

ERIC NICHOLAS VITALIANO, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK.

KRISTI DUBOSE, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA.

W. KEITH WATKINS, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA.

VIRGINIA MARY KENDALL, OF ILLINOIS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

DEPARTMENT OF HOMELAND SECURITY

EMILIO T. GONZALEZ, OF FLORIDA, TO BE DIRECTOR OF THE BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY.

FEDERAL COMMUNICATIONS COMMISSION

MICHAEL JOSEPH COPPS, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR A TERM OF FIVE YEARS FROM JULY 1, 2005.

DEBORAH TAYLOR TATE, OF TENNESSEE, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 2007.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIGADIER GENERAL PHILIP M. BREEDLOVE

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. GARY D. SPEER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

LT. GEN. CHARLES C. CAMPBELL

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be major general*

BRIG. GEN. ANDREW B. DAVIS

IN THE COAST GUARD

COAST GUARD NOMINATION OF CONNIE M. ROOKE TO BE LIEUTENANT COMMANDER.

COAST GUARD NOMINATION OF JOSEPH T. BENIN TO BE LIEUTENANT.

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING WITH JOLENE A. AINSWORTH AND ENDING WITH DAVID C. ZIMMERMAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 28, 2005.

AIR FORCE NOMINATIONS BEGINNING WITH CRAIG L. ADAMS AND ENDING WITH MATTHEW C. WYATT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 17, 2005.

AIR FORCE NOMINATIONS BEGINNING WITH JAY O. AANRUD AND ENDING WITH SCOTT C. ZIPPWALD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 17, 2005.

AIR FORCE NOMINATION OF MARTIN E. KEILLOR TO BE LIEUTENANT COLONEL.

AIR FORCE NOMINATIONS BEGINNING WITH ROBERT W. DESVERREAUZ AND ENDING WITH CHETAN U. KHAROD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 14, 2005.

AIR FORCE NOMINATION OF JULIE S. MILLER TO BE MAJOR.

AIR FORCE NOMINATION OF KARA A. GORMONT TO BE MAJOR.

IN THE ARMY

ARMY NOMINATIONS BEGINNING WITH DEIBY ACEVEDO AND ENDING WITH DAVID R. ZYSK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 13, 2005.

ARMY NOMINATIONS BEGINNING WITH HOLTORF R. ALONSO AND ENDING WITH RICHARD M. ZYGADLO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 13, 2005.

ARMY NOMINATIONS BEGINNING WITH THOMAS E. AYRES AND ENDING WITH PETER C. ZOLPER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 13, 2005.

ARMY NOMINATION OF CINDY R. JEBB TO BE COLONEL.

ARMY NOMINATION OF RICHARD L. CHAVEZ TO BE COLONEL.

ARMY NOMINATIONS BEGINNING WITH SAMUEL CASSCELLS AND ENDING WITH SLOBODAN JAZAREVIC, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 14, 2005.

ARMY NOMINATIONS BEGINNING WITH JOSEPH J. IMPALLARIA AND ENDING WITH ARTHUR E. LEES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 14, 2005.

IN THE MARINE CORPS

MARINE CORPS NOMINATION OF MICHELLE A. RAKERS TO BE CAPTAIN.

IN THE NAVY

NAVY NOMINATIONS BEGINNING WITH TONY C. BAKER AND ENDING WITH JAMES J. VOPELIUS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 13, 2005.

NAVY NOMINATION OF LLOYD G. LECAIN TO BE CAPTAIN.

## WITHDRAWALS

Executive message transmitted by the President to the Senate on December 21, 2005 withdrawing from further Senate consideration the following nominations:

HOWARD A. THRAILKILL, OF ALABAMA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR A TERM EXPIRING MAY 18, 2007, WHICH WAS SENT TO THE SENATE ON NOVEMBER 17, 2005.

SUSAN RICHARDSON WILLIAMS, OF TENNESSEE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR THE TERM PRESCRIBED BY LAW, WHICH WAS SENT TO THE SENATE ON NOVEMBER 17, 2005.