

OMNIBUS BUDGET RECONCILIATION—CONFERENCE REPORT

Mr. ARMSTRONG. Mr. President, I send to the desk a conference report on H.R. 3128, the Consolidated Omnibus Budget Reconciliation Act of 1985, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3128) to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Colorado [Mr. ARMSTRONG]?

There being no objection, the Senate proceeded to consider the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. ARMSTRONG. Mr. President, I have sent to the desk a conference report on the reconciliation bill for fiscal year 1986. I am pleased to do so on behalf of Senator DOMENICI, who is unavoidably away from the Chamber today, and to report to my colleagues that this legislation implements many of the savings proposed in the first concurrent budget resolution agreed to by Congress on August 1. It will save \$20.5 billion in fiscal 1986 and \$83 billion over the next 3 years.

Mr. President, this conference report actually comprises the work of 31 subcommittees and the fruits of negotiations over the past several weeks—indeed, the past few hours—on literally hundreds of provisions covering the jurisdiction of virtually every committee of the House and Senate.

Mr. President, I ask unanimous consent to have printed in the RECORD a table summarizing the major provisions of the conference report and the savings associated with each of the subcommittees.

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

PRELIMINARY BUDGET RECONCILIATION SAVINGS

(In millions of dollars)

	Fiscal year—			Total fiscal year 1986-88
	1986	1987	1988	
Conference totals				
Provisions in outlays	-17,696	-22,577	-28,764	69,036
Increase in revenues	2,819	5,011	6,172	14,002
Reduction in deficit	-20,515	-27,588	-34,936	-83,038
Subcommittee No. 1—Agriculture				
Export sales of dairy products	-178	-188	-197	-563

PRELIMINARY BUDGET RECONCILIATION SAVINGS—

Continued

(In millions of dollars)

	Fiscal year—			Total fiscal year 1986-88
	1986	1987	1988	
Agricultural credit	-953	-2,413	-2,863	-6,229
Total spending reduction	-1,131	-2,601	-3,060	-6,792
Subcommittee No. 2—Tobacco tax earmarking: Cigarette tax earmarking				
Subcommittee No. 3—Tobacco support program: Tobacco program improvements	-63	-70	-87	-220
Subcommittee No. 4—3d-party reimbursement: 3d party reimbursement		-160	-200	-360
Subcommittee No. 5—Champus/Champus Medicare reimbursement for Champus patients		-85	-150	-235
Subcommittee No. 6—Banking and housing: Rural housing loans: Public housing operating subsidies	-1,229	-1,801	-1,896	-4,926
Sec. 108 loan guarantees	-144	-307	-342	-793
Public housing debt forgiveness	-12	-46	-78	-136
Total spending reduction	-1,807	-2,106	-3,157	-7,070
Total spending reduction	-3,192	-4,250	-5,473	-12,925
Subcommittee No. 7—Railroads and USTIA: Amtrak: Local rail service assistance	-98	-126	-140	-364
Total spending reduction	-1	-4	-8	-13
Total spending reduction	-99	-130	-148	-377
Subcommittee No. 8—FCC and CPB: Corporation for Public Broadcasting (CPB): Federal Communications Commission (FCC)	(¹)	(¹)	7	7
Total spending reduction	1	-24	-29	-52
Subcommittee No. 9—Water/transportation programs: Ship construction differential subsidies	-200			-200
National Oceanic and Atmospheric Administration	-42	-59	-63	-164
Maritime Administration	-8	-10	-10	-28
Boat safety	-6	-5	-3	-14
Coastal block grants			50	50
Total spending reduction	-256	-74	-26	-356
Subcommittee No. 10—Pipeline programs: Pipeline user fees: Pipeline safety	-9	-9	-10	-28
Total spending reduction	(¹)	(¹)	(¹)	(¹)
Total spending reduction	-9	-9	-10	-28
Subcommittee No. 11—Energy programs: Strategic petroleum reserve: Synfuels: Shared-energy savings: Biomass loan guarantees	-1,359	-1,331	-1,313	-4,003
Total spending reduction	-96	-166	-234	-496
Subcommittee No. 12—Uranium enrichment and FERC: Uranium enrichment	(¹)	-2	-4	-6
Total spending reduction	-1,455	-1,499	-1,551	-4,505
Subcommittee No. 13—OCS: Outer Continental Shelf (OCS)	-120	-209	-267	-596
Subcommittee No. 14—Highway programs: Federal-aid highways	-4,501	1,685	1,413	1,403
Subcommittee No. 15—MRC fees: MRC fees	-208	-1,000	-1,300	-2,508
Subcommittee No. 16—Medicare pt. A and extended coverage: Spending reductions: Medicare pt. A	-85	-97	-101	-283
Reverse increases: Medicare pt. A: Extend medicare coverage for state and local workers (reverse increases)	-1,613	-2,915	-3,735	-8,263
Total revenue increases	4	5	14	23
Total revenue increases	53	191	293	537
Total revenue increases	57	196	307	560
Subcommittee No. 17—Medicare pt. B: Medicare pt. B	-673	-942	-1,399	-3,014

PRELIMINARY BUDGET RECONCILIATION SAVINGS—

Continued

(In millions of dollars)

	Fiscal year—			Total fiscal year 1986-88
	1986	1987	1988	
Subcommittee No. 18—Medicaid and MCH: Medicaid and maternal and child health	25	-50	-50	-75
Subcommittee No. 19—Private health insurance: Extend private health insurance coverage				
Subcommittee No. 20—PBOG and ERISA: Pension Benefit Guarantee Corporation (PBOG): ERISA	-174	-231	-261	-666
Total spending reduction	-174	-231	-261	-666
Subcommittee No. 21—Income security, trade, and other: Spending reductions: AFDC, TAA, and foster care: Customs fees: Additional customs personnel: Additional IRS personnel: ITC authorization	42	43	198	285
Customs fees	-70	-220	-220	-520
Additional customs personnel	55	34	26	115
Additional IRS personnel	43	43	43	129
ITC authorization	2			3
Total spending reduction	75	-100	37	12
Revenue increases: Increase Customs collections: Increase IRS collections	150	450	615	1,215
Increase IRS collections	365	744	928	2,037
Total revenue increases	515	1,194	1,543	3,252
Subcommittee No. 22—Revenues: Tobacco excise tax: Superfund excise tax: Limit income averaging: Research and development tax allocation: Railroad unemployment insurance tax: Tax railroad retirement benefits like social security: Coal excise tax: Alternates minimum tax for mechanics: Trade adjustment assistance: Import tax: Golf Coast waste disposal authority to issue IOB's: Social security tax treatment for American Samoa	1,543	1,697	1,701	4,941
Superfund excise tax	702	1,348	1,433	3,483
Limit income averaging	133	541	589	1,263
Research and development tax allocation	-191	-96		-287
Railroad unemployment insurance tax		101	98	199
Tax railroad retirement benefits like social security	34	62	65	161
Coal excise tax	43	46	47	136
Alternates minimum tax for mechanics	-15	-75	104	14
Trade adjustment assistance			289	289
Import tax				
Golf Coast waste disposal authority to issue IOB's	-1	-2	-3	-6
Social security tax treatment for American Samoa	-1	-1	-1	-3
Total revenue increases	2,247	3,621	4,322	10,190
Subcommittee No. 23—General revenue sharing: General revenue sharing		-3,526	-4,955	-8,481
Subcommittee No. 24—Federal pay and benefits: Civilian agency pay: 2,087-hour workyear: Postal Service programs: Federal employees health benefits programs	-2,136	-3,800	-4,618	-10,554
Civilian agency pay	-80	-180	-170	-430
Postal Service programs	-45	-65	-27	-137
Federal employees health benefits programs	-973	-148	105	-1,016
Total spending reduction	-3,234	-4,173	-4,710	-12,117
Subcommittee No. 25—Administrative savings: Motor vehicle fleet reductions	1	-132	-274	-405
Subcommittee No. 26—Procedural issues: New reconciliation rules				
Subcommittee No. 27—Education and labor programs: Walsh-Healey overtime provision: Guaranteed student loans	-60	-265	-490	-815
Walsh-Healey overtime provision	-319	-195	-292	-806
Guaranteed student loans				
Total spending reduction	-379	-460	-782	-1,621
Subcommittee No. 28—Graduate medical education: Graduate medical education	(¹)	(¹)	(¹)	(¹)
Subcommittee No. 29—SBA programs: SBA business programs: SBA disaster programs	-301	-574	-590	-1,465
SBA business programs	-129	-421	-457	-1,007
SBA disaster programs				

PRELIMINARY BUDGET RECONCILIATION SAVINGS—
Continued

(in millions of dollars)

	Fiscal year—			Total fiscal year 1986-88
	1986	1987	1988	
Total spending reduction	430	595	1,047	2,471
Subconference No. 30—Veterans' programs				
Health care reforms	109	420	497	1,026
Reduced compensation				
COLA	76	102	104	282
Studies	1	2	2	5
Total spending reduction	184	520	599	1,303
Subconference No. 31—Ruralore retirement funds Restoration fund				
ADDITIONAL				
Total reconciliation savings	20,515	27,583	34,926	83,038
Differences between total reconciliation savings and savings in the conference bill:				
Interest impact of agricultural credit reforms ¹		105	348	453
Interest impact of debt forgiveness ²	1,884	2,285	2,711	6,880
Ship construction differential subsidies ³	200			200
Pay offsets in function 950 ⁴	203	363	439	1,005
Wash-Healey overtime provision ⁵	60	265	430	815
SBA interest offset ⁶		25	91	116
Total difference	2,347	2,938	3,731	9,016
Savings in the conference bill	18,168	24,650	31,205	74,022

¹ Less than \$500,000.² Interest offsets related to agriculture credit savings, public housing debt forgiveness, and SBA business loans were not assumed in the reconciliation reconciliation and are therefore not counted in total reconciliation savings. Their offsets are included in the scoring of the conference bill.³ Savings from ship construction differential subsidies were achieved through administrative action. However, these savings were assumed in the reconciliation instructions and both House and Senate reconciliation bills included provisions allowing the Secretary of Transportation's authority to receive COS authority. Therefore these savings are included in total reconciliation savings but are not included in the scoring of the conference bill.⁴ Administrative instructions for programs relating to pay adjustments and the revision of the 1987/88 wage-price calculation did not assume offsets in function 950 affecting receipts. These offsets are therefore not included in total reconciliation savings but are included in the scoring of the conference bill.⁵ The Wash-Healey overtime provision was contained in the Senate and House reconciliation instructions and in the defense authorization bill. It was included first in the defense authorization bill, Public Law 99-145. Because total savings were assumed in the reconciliation instructions, they are included in total reconciliation savings but are excluded from the estimate of the conference bill.⁶ Note: All offset estimates on this table are based on preliminary estimates from the Congressional Budget Office. All revenue estimates are based on preliminary estimates from the Joint Committee on Taxation. Changes are necessary up to the fiscal year 1986 budget resolution baseline and assume a date of 31, 1985, effective date unless otherwise stated in the legislative package.

Mr. ARMSTRONG. In brief, Mr. President, when the Senate considered the reconciliation bill, we achieved a saving of \$21.4 billion for 1986, \$28.4 billion in fiscal year 1987, \$35.9 billion in projected savings for fiscal year 1988—a total for the 3 years of \$85.7 billion.

I would have to say a word of compliment to those who negotiated through the subconferences on behalf of the Senate because the final figures which we have achieved in this conference report are extraordinarily close to the targets set by the Senate. In total we are within \$2 billion in 3 years of the sought-to-achieve reconciliation bill. We come up with the final total projected savings of \$83 billion.

Let me just mention a couple of specific aspects of it.

Last May 10 at about 3:30 a.m. in the morning we passed the comprehensive

budget resolution. The Senate sought to freeze the defense budget along with most of the cost-of-living adjustments. The budget resolution which was adopted that morning, as my colleagues will remember, eliminated about a dozen Federal programs and would have reduced deficits by \$300 billion over 3 years.

This was a tough budget. It was a tough vote for most Senators. It was a plan which will withstand the test of time because it was fair. It was the right thing to do.

But as my colleagues know, the budget we passed on that morning has not come to pass and I am not going to go back and relitigate that or conjure up old demons, but after several difficult days in July the hope of deep spending cuts was dashed and the Senate was left with the task of trying to pick up the pieces.

I know that Senator DOMENICI particularly had hoped we would accomplish much more than we did this year, and I shared that hope, but under much less than optimum circumstance the decision was made to press ahead with the reconciliation process and get the most we could get and get something instead of nothing.

So I do not mean to minimize what we have. It is not everything we would like to have, but I do not believe it is either enough to fully accomplish the job ahead.

Mr. President, may I also observe that the reconciliation bill contains some provisions which I do not personally support and which I know that other Senators may not prefer, and indeed, which may not enjoy the support of the President, but it is like all major legislation, the product of negotiation and compromise among different interests. It is a product that while not perfect will save an extraordinary, indeed a stupendous amount of money over the next 3 years, \$83 billion.

Now that the Gramm-Rudman Deficit Reduction Act is the law of the land, the stage is set for us to get the job done beginning in January, but this reconciliation bill is an important, indeed a critical prelude to that process because if we were to fail to enact this conference report there would be \$83 billion more on the table against which Gramm-Rudman would have to operate. So this is really an important step for us, even though it is not in any sense the final step.

Mr. President, I see on the desk a stack of papers. May I inquire is that the final paperwork? If not, then let me just conclude my remarks and yield to my colleague from Louisiana.

I wish to close by recognizing the invaluable leadership and participation of our colleague, Mr. JOHNSTON, who has stepped forward to manage on behalf of the minority party in the absence of Senator CHILES, who we trust is recovering from his surgery and who we all hope will be back to pick up his role of leadership in this task next month.

I spoke to Senator CHILES a while back, and it sounded as though he was on the mend and doing well and probably doing better tonight, I would say to my colleagues, than we are. We miss him. But the Senate is fortunate that Senator JOHNSTON has been here to pick up this task.

I also wish to extend my personal thanks to the Budget Committee, especially the director, Steve Bell; the deputy director, Bill Hoagland; Richard Brandon; and many others who have worked literally day and night to bring us to this stage and deserve not only our thanks but indeed our compliments.

Mr. President, pending the arrival of the paperwork, I yield the floor and hope that my colleague from Louisiana will also have something to say about this conference report.

Mr. JOHNSTON. Mr. President, I thank my distinguished colleague for his generous remarks.

Mr. President, the distinguished Senator from Colorado [Mr. ARMSTRONG] has stepped in at a very crucial time in the reconciliation process and I think has played a key role in getting us to the point where we are.

Reconciliation has been in all its parts and in especially some of its parts like a child with a series of childhood diseases, life threatening each, and enough to make its parents despair as to whether it would pull through. Most recently it has had cancer from which we hope it will recover. It has been through diphtheria; it has been through pneumonia. It has been through the worst of diseases.

But we think finally, Mr. President, we are going to pass reconciliation here tonight and with it save \$83 billion.

Mr. President, I do not speak tonight so much to my colleagues who I am quite sure will vote readily, enthusiastically, and eagerly for \$83 billion dollars' worth of cuts which have been put together with such craftsmanship by those involved. I think it was a monumental job. It is recognized as such and, as I say, it will be eagerly supported.

But my few remarks tonight, Mr. President, go really to the White House because there is a lingering rumor still that in spite of the fact that this saves \$83 billion they might be so foolish as to veto this legislation.

Mr. President, I would strongly urge the President that he not do so. I think it would be a tragedy in so many ways for the country and certainly for the Gramm-Rudman process.

This does, in fact, save \$69 billion over 3 years in outlay cuts and \$14 billion in revenues, for a total of \$83 billion or \$5 in spending cuts for every \$1 in revenues.

There are \$69 billion in outlay cuts in domestic programs, and if this is not passed, Mr. President, and I say that to the President in this body and also to the other President also, that

\$69 billion has to come half from his defense and, Mr. President, he and you have both said constantly and repeatedly that national defense should not be cut by Gramm-Rudman. If this is vetoed, Mr. President, you are setting the scene for having to take half of \$69 billion additionally from national defense which you would not have to do so.

Mr. President, the cuts in outlays come from all parts of the budget, \$6 billion from agricultural credit, \$5 billion from rural housing loans, \$0.4 billion from Amtrak, \$4 billion from the strategic petroleum reserve, \$2.5 billion from highways, \$11 billion from Medicare.

Congress has met its commitments to cut these programs in very difficult times. The revenues are not general tax increases. There are no changes in the rates. They are modest taxes at best and an extension of the tobacco tax, the excise tax; \$4.9 billion is not a tax increase. It is a simple extension of that tax, and there is not anyone in this body that I know of who thinks that the tax should not at least be extended.

There are \$3.5 billion for the Superfund tax. Mr. President, that is a very painful and difficult subject matter. Many of us from the petrochemical States whose States have double-digit unemployment right now think if you put the value-added tax to finance Superfund that it would take our States out of deep recession and put them directly into a depression.

If you were going to make that sacrifice for States like Louisiana and Texas for the good of the Nation it would be one thing; but it would not be for the good of the Nation, Mr. President, because it would make our whole petrochemical industry noncompetitive.

In any event, Mr. President, after a very long period of time, debate, and consideration in this Senate we came up with that modest \$3.5 billion tax and certainly \$83 billion in outlay savings should not be sacrificed because of some ideological disagreement with what is called a value added tax if that in fact is what it is.

Mr. President, in January when we come back, we come back the last week in January, and by February 5 the President must submit his budget. In my judgment, when the President submits his budget for fiscal year 1987, it is going to be a very acrimonious time in this body, particularly if there are no increases in taxes in that budget and if there continue to be increases in national defense, because it is going to mean that the rest of the budget is absolutely savaged and it is not going to be that kind of atmosphere where Congress and the White House can sit down and quickly put back together this package of cuts. In fact, once Humpty-Dumpty falls off that wall, if this package is vetoed, it is going to be impossible, in my judgment, to put this Humpty-Dumpty back together

again. Congress will say, "Let us let sequestration do it because half of this would come from national defense." I refer particularly to our friends in the other body. They think national defense should be cut a lot more.

And the way to do it is to do it automatically under Gramm-Rudman, under sequestration. So that is really what we are talking about at the bottom. If this bill is vetoed, then you change \$69 billion in outlay domestic cuts to 50-50 domestic and defense cuts. And that is exactly what the White House is going to get if this is vetoed.

Mr. ARMSTRONG. Will the Senator yield?

Mr. JOHNSTON. I certainly will.

Mr. ARMSTRONG. Mr. President, I did not mean to interrupt the Senator's statement. It is not my desire to use further time, other than to comment briefly on the possibility that the President might veto this bill.

I have also heard the rumor around this Chamber and in the lobbies beyond this Chamber that the President might have some disposition to veto this bill. I want to say, without having any inside information and without having any real way to know this, other than just having watched Ronald Reagan's public life for a long time, that he is not going to veto this. In my judgment, it would be the most unlikely act of folly for any President, let alone President Ronald Reagan, to veto this bill. You will just never make me think he is going to do that.

I know that he does not like the value-added tax provision in here. I do not like it, either. I voted against it when it came through the Finance Committee, 16 to 2. But he is not going to veto this bill over that.

There are other things he does not like, nor do I. But, Mr. President, I associate myself with the remarks of the Senator from Louisiana in saying that what is good in this bill far outweighs those things about which we might disagree.

I am just confident that, when the President focuses on it, he is going to have his pen out to sign it and do so, I believe, not grudgingly, but, in fact, will be glad to do so, even though there may be things in there he does not fully endorse.

Mr. JOHNSTON. Mr. President, I am very pleased to see this conference report on H.R. 3128, budget reconciliation, presented to the Senate. Putting this package together of budget saving measures was a remarkable achievement for which the chairmen of the respective committees should be proud.

In particular I am pleased with the provisions in title VIII, subtitle A, which settle the longstanding and contentious dispute between the coastal States and the Federal Government over the division of the so-called 8(g) OCS revenues. This provision is a modified version of S. 1653, the Outer Continental Shelf Lands Act Amend-

ments of 1985, which I introduced on September 17, 1985, with Senator MURKOWSKI as a cosponsor. Identical language was introduced on the same day in the House by Mr. BREAUX and Mr. HUCKABY.

Let me review what is contained in this conference report in subtitle VIII A, amendments to the Outer Continental Shelf Lands Act of 1985.

SECTION 8002. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF

This section simply adds an additional policy to those already contained in the OCS Lands Act. In effect, the policy states that the 8(g) revenues will provide coastal States and localities with funds which States or localities may in their discretion use to mitigate adverse economic and environmental effects related to the development of OCS mineral resources.

SECTION 8003. REVISION OF SECTION 8(g)

Paragraph (1) of section 8(g) of the OCS Lands Act is amended to clarify and expand the requirements on the Secretary of the Interior to provide information to the Governor of any coastal State where nominations are solicited for leasing lands wholly or partially within three nautical miles of the seaward boundary of such State.

Paragraph (2) of section 8003 revises the 8(g) provision in current law which provided for a fair and equitable disposition of certain OCS revenues to coastal States. After the date of enactment of this subtitle any bonuses, rents or royalties received by the Federal Government which are derived from any lease of any Federal tract lying wholly or partially within 3 nautical miles of the seaward boundary of a coastal State must be deposited in a separate account in the Treasury.

The conference report uses the term "all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1)), excluding Federal income and windfall profits taxes, and derived from any lease of any Federal tract. . . ."

The parenthetical phrase simply limits "other revenues" to include only the revenues from the current OCS bidding system and the alternative bidding systems that are set out in section 8(a)(1) of the OCS Lands Act as amended. The exclusion of Federal income and windfall profits taxes from distribution under this subtitle was already recognized in the committee report on the Senate version of this bill.

The use of the term "any Federal tract which lies wholly or partially within 3 nautical miles of the seaward boundary of any coastal State" throughout this subtitle is the means by which the Department of the Interior is foreclosed from prorating the States' share of 8(g) revenues by surface acreage.

This paragraph also requires the States' share of the 8(g) revenues to be transmitted to the State not later

than the last business day of the month following the month in which those revenues are deposited in the Treasury. While the statement of managers affirms that the Department must meet this deadline, it recognizes that the Department requires some time to process the reports from lessees to distinguish 8(g) revenues from non-8(g) revenues. We certainly expect that the Department will exercise its most diligent efforts to identify the 8(g) moneys and to either distribute the States' share immediately to the States or to invest these moneys in interest-bearing securities.

There is no question but that paragraph (2) applies to revenues derived from Federal tracts lying wholly or partially in the 8(g) zone regardless of when they were leased. The language on its face says "any lease" and makes no exclusion based on the date of the issuance of the lease itself. This is in contrast to paragraph (5) of this same section which is explicitly limited to lease sales occurring after September 18, 1978, and which addresses the situation where there is a boundary dispute between the Federal Government and the State under section 7 of the OCS Lands Act.

The legislative history on this provision confirms this logical interpretation of the plain meaning of the words on this point. On November 14, 1985, Senator EVANS offered an amendment No. 1040 to the provision on section 8(g) contained in the Senate's omnibus reconciliation bill, S. 1730. The Evans amendment would have limited the application of paragraph (2) to any lease "issued after September 18, 1978."

Senator EVANS explicitly noted that the State of Louisiana was claiming that this provision on section 8(g) in S. 1730 gives Louisiana the right to revenues in the 8(g) zone on tracts leased prior to September 18, 1978. He acknowledged, "S. 1730 supports the attempts of Louisiana to claim these additional revenues."

Senator METZENBAUM cosponsored the Evans amendment and sent out a "Dear Colleague" letter on November 12, 1985, which was devoted entirely to alerting members to Louisiana's claims that the section 8(g) provision as reported in the Senate's budget reconciliation bill would apply to revenues from leases issued before the 8(g) zone was first created by legislation, September 18, 1978. The Evans-Metzenbaum amendment was defeated by a tabling motion in a vote of 54 to 45. Furthermore, in my own statement on page S. 15437 of the CONGRESSIONAL RECORD of November 14, 1985, I acknowledged that the committee-reported provision applied to future bonuses and rents from leases whenever executed and that the provision also applied to future royalties from any leases, "whether executed before or after the 1978 amendments. . .".

So there can be no doubt about it, the Senate considered limiting the

sharing of revenues with the States to only those revenues from leases executed after September 18, 1978, and declined to do so. On the House side, Representative BREAUX addressed this same point when the measure on 8(g) which he sponsored was considered on the floor on October 23, 1985, as part of the House budget reconciliation bill. He said,

So it does provide for the past inadequate escrowing activities because of the prorating scheme that the Interior Department came up with, including post-1978 royalties from the 8(g) tracts no matter when the lease was issued.

The same issue arose again in the House-Senate conference on budget reconciliation although the House and Senate had passed bills with essentially identical language on the point in question. Representative SHARP proposed to the House conferees that they add statement of managers language to the effect that the OCS subtitle would not apply to any revenues from tracts leased prior to September 18, 1978. The House conferees considered this and rejected it by a rollcall vote.

The statement of managers is dispositive on this issue.

During the Conference, an issue was raised as to whether revenues received by the Federal Government from tracts located in what is now the 8(g) zone, but which were leased prior to the date of enactment of the OCS Lands Act Amendments of 1978 (September 18, 1978), should be excluded from the distribution of revenues to the States under this title. The uniform position of the Senate Conferees was that the issue had been settled by a roll call vote on the Senate floor and that all such revenues were subject to such distribution under this title. The House Conferees then considered and rejected a motion to adopt Statement of Managers language to exclude such revenues.

Therefore, the plain words of this conference report coupled with the legislative history on the House and Senate side leaves no doubt that paragraph (2)—as well as section 8006 on recoupment—applies to tracts whenever they were leased.

Paragraph (3) requires the Secretary of the Interior or the Governor to notify each other whenever either determines that an area which potentially contains hydrocarbons underlies the Federal-State boundary. The Secretary and the Governor are permitted to enter into a unitization agreement or other royalty sharing agreement. Whether or not such an agreement is achieved, the Secretary may lease the tracts in question, which is consistent with the provision in current law.

Paragraph (4) requires the Secretary of the Treasury to invest the revenues deposited under this section in securities backed by the full faith and credit of the United States having maturities yielding the highest reasonably available interest rates as determined by the Secretary. These securities will require a short maturity period as the Department is required to distribute

the States' shares of the revenues by the last business day of the month following the date of deposit. Of course this time period is measured from the date the Federal Government first receives the revenues from the lessees, whether or not the 8(g) revenues are segregated from the non-8(g) revenues.

Paragraph (5) addresses the situation where a State has a boundary dispute with the Federal Government over the location of the Federal-State boundary. Section 7 of the OCS Lands Act, as amended, controls this situation. Only since the location of the Federal State boundary is settled can the location of the 8(g) zone be established and the State's share of 8(g) revenues determined. Section 8(g)(5) of this conference report governs how escrowed funds are to be treated in such a situation. The conference report explicitly limits the application of this paragraph to tracts from lease sales occurring after September 18, 1978.

Paragraph (6) provides that any OCS bonuses, rents, or royalties received by the Federal Government beginning October 1, 1985, shall be deposited and distributed to the States under section 8(g) as revised by this conference report. Thus, the revised section 8(g) will have a retroactive effect back to October 1, 1985, for purposes of determining the amounts to be deposited in the separate Treasury account and the computation of the States' shares.

Paragraph (7) applies to the situation where Federal leases lie wholly or partially within three miles of the seaward boundary of 2 or more States. There are Federal tracts in the Sabine Pass between the States of Texas and Louisiana which fall in this category. Under this provision Texas and Louisiana will each receive 13½% of the 8(g) revenues from these tracts, and potentially an additional amount under recoupment in section 8006.

SECTION 8004. DISTRIBUTION OF 8(G) ACCOUNT

This section of the conference report determines how the funds currently held in the 8(g) account shall be shared with the States including those 8(g) revenues which the Government receives between now and the date of actual distribution of such funds to the States.

Subsection (a) requires the Secretary of the Interior to distribute to the States prior to January 1, 1986, the States' shares of OCS revenues received beginning October 1, 1985, under the new 8(g) provision as revised by this conference report, plus the States' shares enumerated under subsection (b) from the current 8(g) escrow account held in the Treasury.

The statement of managers recognizes that some of the States' shares of 8(g) revenues have been invested in securities which will not mature until after January 1, 1986. In the past the Department has invested the escrowed

8(g) funds in 90-day Treasury notes. Therefore, there may well be some delay in paying the States all they are due by January 1, 1986. However, the Department is expected to use all available funds to pay the States their share prior to January 1, 1986. As soon as the remainder of funds due becomes available as these notes mature, the States must be paid the balance they are due.

Subsection (b) determines the distribution of funds deposited in the special Treasury account through September 30, 1985, which were escrowed under the 8(g) provision as it existed prior to amendment by this conference report.

That original 8(g) provision called for a fair and equitable disposition of revenues among the States and the Federal Government. Subsection (b) is the legislative settlement establishing a fair and equitable disposition of the bonuses, rents, and royalties and accrued interest which are contained in the special Treasury account. Paragraph (1) mandates the State-by-State distribution of bonuses and rents and accrued interest royalties and accrued interest which were actually deposited into the 8(g) account through September 30, 1985.

Paragraph (2) refers to the distribution of the royalties derived from any lease of Federal " * * * lands within 3 miles of the seaward boundary * * * " of each State plus accrued interest. By this term paragraph (2) refers back to the original 8(g) language which gave rise to the need for a fair and equitable legislative settlement between the Federal Government and the States. Paragraph (2) provides each State 27 percent of the royalties plus accrued interest which were actually deposited into the 8(g) Treasury account with respect to each such State. The Treasury account currently keeps track of how much royalties were collected offshore of each specific State, so the Treasury account provides the basis for identifying the amount of royalties plus interest to which each State respectively is entitled to a 27-percent share—and somewhat more in the case of recoupment.

Paragraph (3) simply gives the U.S. Treasury the balance of the moneys remaining in the 8(g) Treasury account as of September 30, 1985, after the States' shares have been distributed.

Paragraph (4) provides that a State's acceptance of the payment to which it is due under this section will satisfy and release all that State's claims against the United States under section 8(g) as it existed prior to amendment under this title. Obviously, the State's claims are not extinguished until it accepts the full payment it is due under this section. Thus, if the Federal Government pays the State in more than one installment as securities in which the 8(g) funds are invested reach maturity, then the extinguishment of the State's claim occurs

only upon acceptance of the final installment.

It should be understood that section 8004 represents a fair and equitable disposition of only the funds which were actually deposited in the account or invested in securities held by the account as of September 30, 1985.

Section 8006 on recoupment addressed the remaining issue of what is a fair and equitable disposition to the States of funds which should have been escrowed by the Department of the Interior but which for a variety of reasons were not actually escrowed in the past.

SECTION 8006. IMMOBILIZATION OF BOUNDARIES SECTION 8006. RECOUPMENT

The legislative history of the 8(g) provision in the budget reconciliation bill amply demonstrates that the Department of the Interior did not escrow all the 8(g) revenues which should have been placed in the separate Treasury account.

This section on recoupment establishes by legislation a fair and equitable disposition to the States of the revenues derived by the Federal Government between September 18, 1978, and September 30, 1985, which should have been escrowed but which in fact were not placed or kept in escrow. This section accomplishes this objective by first entitling the States in section 8006(a)(2) to 27 percent of all bonuses, rents, and royalties and other revenues collected by the Federal Government plus accrued interest for the period September 18, 1978, through September 30, 1985, and which were derived from any lease of any Federal tract which lies wholly or partially within 3 nautical miles of the State. Then section 8006(a)(2) reduces the amount due the State by that which they were already paid under section 8004(b) in the distribution of the amounts actually held in escrow as of September 30, 1985. So the net amount the States receive under recoupment is that which they should have received but which they did not receive.

Here again the reference to "any lease of any Federal tract" in section 8006(a)(1) means that this section applies to any Federal leases regardless of the date of their execution.

The conferees added the term "excluding Federal income and windfall profits taxes" to ensure that these taxes are not treated as "other revenues." In fact, the term "other revenues" is limited to those revenues derived from any bidding system authorized in section 8(a)(1) of the OCS Lands Act.

Subsection (b) calls for establishment of a second separate Treasury account for recoupment which is funded as described in subsection (c). On the last business day of each month the total amount in this recoupment account is swept out and paid to the State's which are due recoupment payments under subsection (a). Each State receives a pro rata

share—based on the amount of recoupment each State is due relative to the total amount of recoupment due to all the States—of the total amount swept out of the account.

Subsection (c) provides that an additional 10 percent share—over and above the 27 percent share the States receive under section 8003—of the revenues deposited after October 1, 1986, into the separate Treasury account established under section 8(g)(2) will be placed in the recoupment account described in section 8006(b).

Mr. President, the Congress has fashioned a legislative solution to the 8(g) controversy that is fair and equitable, which should end litigation over the issue, and which has been scored by the Congressional Budget Office as saving the Federal Government hundreds of millions of dollars. I urge my colleagues to support this conference report. I urge the President to sign this bill to put an end to the 8(g) controversy.

Mr. President, the compromise reached on the question of the Uranium Enrichment Program deserves a few comments. The Senate took the position that the Department of Energy's Uranium Enrichment Program should be made to repay to the Treasury only those revenues, if any, that exceed the program's costs. The House took the position that the Uranium Enrichment Program's costs, if effect, should include specific required repayment amounts.

Based on the record we have now we simply cannot resolve the complex factual question of how much the program can, in fact, afford to repay to the Treasury or even how much the program actually owes to the Treasury. Therefore the compromise that is proposed by the conferees sets the repayment numbers of the House as goals, and authorizes the Secretary of Energy to determine the amount that the program will repay consistent with several criteria. The Secretary is not required to make any repayment.

The criteria in the bill assume that the continued viability of the Federal uranium enrichment enterprise is in the national interest. In our view in the Senate, this viability is severely threatened by proposals that the costs of the program be artificially increased. The price that the U.S. Department of Energy charges for uranium enrichment services is far above the prices charged by competitor governments and far above the prices charged on the secondary market for enriched uranium. If the United States is to remain in the enrichment business, the U.S. price simply must be lowered. This can only be accomplished by lowering the costs of enrichment, not by increasing them. We need to invest in new, lower-cost enrichment technology—like the laser-based technology currently under development. We do not need to impose new costs on the program that will

delay the time when the United States can offer enrichment services at competitive prices.

So we think that the goals for repayment set out in this bill are way too high. We think the program should lower costs and prices. We are confident that an honest determination by the Secretary under the bill will find that the repayment amount that will not adversely affect the reliability of supply of uranium enrichment services at competitive prices to existing and potential customers will be a zero repayment. We are deeply concerned by recent press reports that the Office of Management and Budget is seeking even larger repayment amounts than those in the House bill.

The only conclusion that we can draw from these reports is that someone wants the United States out of the uranium enrichment business. This is not a new proposition. In the 1970's it was proposed by President Ford and dropped when the phrase "nuclear non-proliferation" began to appear regularly in the newspapers.

If privatization of the uranium enrichment business is what we are dealing with, we should face that issue squarely and debate it. There are lots of implications to such a notion that go far beyond the provision of enrichment services to the Nation's nuclear reactors. A reconciliation bill is not the place for such a debate. Budget proposals that purposely cripple the Federal enterprise in order to set up a situation where selling it off is the only option are not the way to make policy.

Under the bill we are approving the Secretary of Energy is required to make a determination of the size of the Uranium Enrichment Program's debt and the amount of repayment that can now be made consistent with the continued financial integrity of the program over the long term. I hope that these determinations and the process by which they are made will provide the basis for a debate on the long-term future of the Department of Energy's enrichment program. No reasonable long-term planning is possible under a threat of an undetermined and possibly crippling repayment requirement. We should settle this issue. The program can be a source of cash to reduce the deficit or it can be competitive. It cannot be both.

The stakes of guessing wrong in this planning process are very high. We should be debating this issue, and soon. If the provision we are enacting today brings the beginning of that debate closer, our work will have been worthwhile.

I reserve the balance of my time.

THE PRESIDING OFFICER. Who yields time?

Mr. ARMSTRONG. Mr. President, I yield 5 minutes to the Senator from Texas, and more if he needs it.

Mr. GRAMM. Mr. President, I thank the distinguished Senator from Colo-

rado. I rise to make several points about the conference report and about reconciliation.

I wish to begin, Mr. President, by saying that I am disappointed by the fact that reconciliation, which was a vehicle used so effectively in 1981 to reform entitlement programs, to change the spending patterns of the Federal Government, to change the direction of the American economy by changing the policies of the Federal Government, has become a catch-all vehicle for doing so many things that have nothing to do with saving money.

I am pleased that, under the Gramm-Rudman-Hollings proposal, points of order will lie against nongermane provisions; and by that we mean, in simple English that the general public understands, provisions that do not have anything to do with saving money in reconciliation. It saddens me a great deal to be forced to make a choice concerning the things in this bill that I strongly support and things in this bill that have nothing to do with saving money that I strongly oppose.

I oppose beginning a new entitlement program in this bill. And we have done that by expanding the base and reauthorizing trade adjustment assistance. We have imposed a new tax on imports, in clear violation of GATT. We have reauthorized more programs in this bill than any bill that has been adopted since I have been in Congress in 7 years. I thought reconciliation was about saving money, not reauthorizing programs.

So I believe that my strongest concern about this bill has nothing to do with how we ought to finance Superfund. In fact, I think the base of that tax has got to be a broad base if we are going to be able to afford the kind of cleanup that Congress seems committed to.

But my concern is that we have, in the process of this reconciliation bill, come very close to destroying the only vehicle that we have ever found to address the fundamental issues about Government spending. And I think that is a sad commentary on what has happened to the budget process in the 5 years that we have tried to make it work. I am hoping that next year, with a new framework, we can prevent this from happening.

Mr. ARMSTRONG. Will the Senator yield to me?

Mr. GRAMM. I am happy to yield.

Mr. ARMSTRONG. I share the concern that the Senator from Texas has expressed, because the extraneous provisions which have been added to this bill are a procedural outrage, whether you agree with the substance of them or not.

But, as reassurance, let me point out to the Senator that we have adopted a provision which will limit the addition of extraneous matter to future reconciliation bills. And it will be my purpose, following the adoption of this conference report, to offer a Senate

resolution, which has been cleared on both sides, which will extend the same protection against extraneous material being added to reconciliation conference reports.

So I can say to the Senator, while the horse is out of the barn on this particular bill, I do not think we will ever again face the kind of wholesale legislation on a reconciliation bill that we have seen on this bill. I share his concern, but I think we have got that bottled up.

Mr. GRAMM. Mr. President, let me say to the Senator from Colorado that I appreciate and wholeheartedly support that sense of the Senate. We, as a result of the Byrd amendment which has been incorporated into the Gramm-Rudman-Hollings proposal, have an additional vehicle in a point of order in the future. But I think it is unfortunate that a vehicle that was aimed at saving money has become the number one reauthorization and spending vehicle in the Congress.

Finally, I would like to make an additional point that has nothing to do with whether you are for or against this bill. In the future, we have got to come up with a better accounting system so we all know what we are doing.

Let me give you an example. The biggest single savings in this reconciliation bill comes from Medicare—\$11 billion. Now, you look at that \$11 billion and you could say we could certainly use that \$11 billion in the budget. But the truth is this reconciliation bill not only does not save any money in Medicare, it adds to spending in Medicare. And it does so because of an accounting system that really does not make sense, and I hope we will not use it in the future.

What we have done here is raised the reimbursement level for Medicare providers by 1 percent and we have scored that against the current services base to claim the largest single savings in this proposal. But there is one flaw in that process, or one hook before we run to the bank with the \$11 billion, and that is, the administration, through HHS, froze the reimbursement level and, therefore, not only do we not save the \$11 billion here, but we are raising spending above the level which would exist under Medicare in the absence of the adoption of this bill.

I appreciate all the work that has been done on this conference report. I do not know whether the President is going to sign it or not.

Quite frankly, I am strongly opposed to some of the provisions it contains, some of the new programs, and some of the new entitlements which we are starting on the spending bill. On the other hand, there are some savings in here.

But there are two points that I think ought to be reiterated.

No. 1, we need a vehicle, to stop reconciliation from being used to promote

spending, rather than to stop it. As a result of the Byrd amendment, Gramm-Rudman-Hollings, and a resolution that will be offered here, we will prevent the abuse of reconciliation in the future.

Reconciliation is for saving money, and not for spending.

No. 2, it is vitally important in the future when we bring these kind of proposals to the floor for debate that we have an assessment by the Congressional Budget Office as to how much money is actually saved.

It is very difficult to have any kind of meaningful debate on an issue when we have the largest single savings in a vehicle which represents not savings at all but a substantial increase in spending.

So I think, No. 1, we need to go back to use reconciliation for what it was meant to do. I just wish we were going to do it this year. I would have felt a lot better about this proposal.

No. 2, we need to have an effective way of accounting so we know whether we are saving money or not. While there are savings in this bill, and I know people have worked hard to get those savings, the truth is the savings are nothing like the figures we are showing here because they do not take into account the savings that have already been undertaken.

I thank the distinguished Senator from Colorado for yielding.

I yield back the balance of my time.

Mr. BENTSEN. I would ask the distinguished Senator from Louisiana, our very able ranking member on Energy and Natural Resources and the reconciliation subconference on Outer Continental Shelf matters, if he would enter into a brief colloquy regarding the section 8(g) OCS settlement in the conference report on reconciliation. Senator Johnston, it is my understanding that the 8(g) settlement in the reconciliation conference report was, in part, necessitated by the legal dispute between the States and the Federal Government over a "fair and equitable" disposition of revenues from the 8(g) zone and that the report among other things expressly intends to settle and extinguish that legal dispute. The legislative history of this measure is replete with references to the ruling by Judge Robert Parker in the eastern district of Texas.

Judge Parker, using a concept of bonus-enhancement, held that the State of Texas was entitled to the equivalent of 27 percent of the 8(g) bonuses in question as income to which the State was fairly and equitably entitled as a result of mineral development on State lands adjacent to the 8(g) zone.

This legislation implicitly recognizes that ruling and grants the States at least 27 percent of the bonuses, rentals and royalties as the basis for a permanent 8(g) settlement that benefits the entire Nation.

Mr. JOHNSTON. I would commend my distinguished colleague from

Texas for his correct interpretation of out intent in this legislation.

Mr. BENTSEN. I would also like to ask the distinguished chairman of the Energy and Natural Resources Committee, Senator McCLURE, if he agrees with my understanding as I have stated it.

Mr. McCLURE. I do.

PENSION BENEFIT GUARANTY CORPORATION CONFERENCE REPORT TO THE RECONCILIATION BILL

Mr. THURMOND. Mr. President, in my capacity as a conferee on the Pension Benefit Guaranty Corporation [PBGC] subconference, I found my experience as chairman of the Judiciary Committee to be extremely valuable. Because the Judiciary Committee has jurisdiction over bankruptcy law, I have developed an active interest in this area. As my colleagues are aware, initial PBGC reconciliation proposals dealt with bankruptcy issues, both directly and indirectly. I am pleased that this conference report has deleted all those provisions which would have directly affected bankruptcy law and principles. Specifically, the creditor status in bankruptcy of the PBGC based on 30 percent of an employer's net worth purposefully remains the same as under existing law. The conference does not address the question of whether or not a pension plan is an executory contract. That will be decided under the law as it existed prior to this conference report. However, to the extent a pension plan is an executory contract, it is covered by the voidance provisions of section 365 of the Bankruptcy Code. Absent the consent of all involved parties, no claim by PBGC survives bankruptcy.

The conferees wisely chose to stay neutral and simply maintain current law regarding these issues. However, we did see the need to create a larger sized claim by the PBGC. While maintaining a neutral position on the status of the 30-percent net worth claim, to the extent that 75 percent of the employer's pension asset insufficiency exceeds 30 percent of the employer's net worth—the PBGC was given a general unsecured claim in bankruptcy. It is clearly understood by the conferees that although this additional claim is unsecured, no inference whatsoever should be created as to the status of the 30-percent net worth claim. The status of this new, general unsecured claim adds no evidence—one way or the other—to the issue of what status in bankruptcy PBGC has to 30 percent of the employer's net worth.

I deeply appreciate the sensitivity which the conferees have shown to the concerns of the respective Senate and House Judiciary Committees regarding these bankruptcy issues.

The current estimated deficits for the PBGC in the amount of \$1.3 billion illustrate the need for immediate reforms in this system. Several provisions in current law have contributed to this present state of affairs. The premium rate has been too low. Waiv-

ers of employer funding have been granted too generously. Although the dumping of pension plans with insufficient assets to pay retirees has not been encouraged, it has been facilitated under current law. Those companies which have taken advantage of this system have exacerbated the financial problems of the PBGC.

The reforms which are provided in this legislation will put businesses on notice that in the future, responsibilities to these pension plans cannot be so easily abandoned. As a matter of fairness, I firmly believe in the concept of reasonable notice. Too many citizens, financial institutions, and other creditors have in good faith relied on the existing law. Despite prospective application of these reforms, I fear that some creditors, especially small businesses, still may be unfairly impacted by this legislation. The small businessman who has extended credit to a distressed company has done so in reliance on existing law. If the credit customers of these small businessmen file for bankruptcy after January 1, 1986, the recovery of the small creditor in Bankruptcy Court may be greatly reduced due to the increased size of PBGC's claim as an unsecured creditor. This example clearly demonstrates that retroactive application would be blatantly unfair. Nevertheless, the majority of conferees have approved one exception to the prospective application of these reforms.

The exception to which I refer involves a provision in this legislation that only applies to pension plans that have posed no threat to the solvency of the PBGC. These pension plans are full funded and seek termination to regain excess assets. Many of these plans hope to use these assets to expand their business and hire new employees. They have applied for termination in compliance with current law and do not deserve this selective retroactive treatment. Over my strenuous objection, the majority of my colleagues on the conference have imposed a possible 90-day suspension of processing these currently pending terminations.

The challenge faced by the conferees was to provide reforms without discouraging the formation of pension plans. As I have stated, this legislation has its defects. However, I believe that in most respects we have succeeded in meeting this challenge. Accordingly, I am willing to support this conference report.

Mr. SIMON. The provisions of the reconciliation bill dealing with Department of Labor plan assets regulations only provide SEC registered real estate limited partnerships and other similar real estate entities with effective date relief if the Department of Labor fails to issue final regulations or issues final regulations which would subject such real estate entities to plan asset treatment. What assurance do we have that this section will solve

the problems raised by the efforts of the Department of Labor to subject such real estate entities to ERISA jurisdiction?

Mr. NICKLES. The provisions you refer to and the related conference report language were worked out in advance with the Department of Labor. The cooperative attitude on the part of the Department was reason enough to limit this section to effective date relief and reason enough for us to refrain from substantive legislation at this time.

I share your concern that the Department's regulations come out right on this point. I suggest that we all be prepared to enact substantive legislation if the Department does not clearly exclude SEC registered real estate entities from plan asset treatment in its final regulations.

Mr. SIMON. Thank you. I am satisfied. It is particularly important that the Department not disturb the highly technical free transferability exceptions which have been crafted so carefully to reflect the myriad existing state blue sky and other requirements and the administrative practices of such programs. If those exceptions are tightened in final regulations without careful attention to the impact on SEC registered real estate entities, the regulations will be fatally flawed and a legislative solution may be necessary. The proposed requirement that public real estate offerings not be primarily marketed to plans which was in the January proposal but is absent from this bill is inappropriate. It results in undue expansion of the Department's jurisdiction through a logically flawed shortcut. That requirement would avoid a more careful analysis based upon the similarity of the characteristics of a given investment vehicle to a typical investment management relationship which is the proper focus of ERISA.

I take comfort in the Department's cooperative approach to this legislation and hope that the Department's final regulations will contain standards applicable to SEC registered real estate entities which are not more stringent than those described in subsection (A)(1)(c) of this provision.

Mr. NICKLES. I agree with your observations.

A VICTORY FOR THE COAL INDUSTRY AND COAL MINERS

Mr. ROCKEFELLER. Mr. President, today a victory was won for the coal industry and coal miners. A major compromise was reached by the Senate and House regarding the financing of the black lung disability trust fund. In the reconciliation legislation we are acting on tonight, the compromise provision is included which will restore the fiscal solvency of the fund.

I have been actively involved in this issue since the President made his original proposal to increase the excise tax on coal by 50 percent. This tax increase would have had a disastrous

effect on the coal industry. Even more jobs would have been lost and the industry would have had little choice but to raise the price of domestic coal—a move which would have inevitably hurt us in the international marketplace.

At the same time, I have recognized the urgent need to deal with the \$2.5 billion deficit of the black lung trust fund. We simply had to take action this year to restore the fund's solvency if we were to ensure that miners and their families would continue to receive benefits entitled to them under the law.

In the recent weeks, I have concentrated on promoting an alternative to the tax increase as well as to a measure adopted by the Senate Finance Committee which would have ended the borrowing authority of the black lung trust fund. A number of my distinguished colleagues who represent states with significant coal mining joined me in seeking a responsible response to the fiscal problems of the fund.

Today, we succeeded in winning the support of the reconciliation conferees for a responsible alternative. The compromise plan was developed by the Bituminous Coal Operators and the United Mine Workers of America. These two groups worked cooperatively to fashion and approach to solve the black lung trust fund deficit—namely, they suggested a one-time, 5-year forgiveness of the interest payments on the cumulative indebtedness of the trust fund and a 10 percent increase in the coal excise tax.

Mr. President, I am grateful to the reconciliation conferees for agreeing to this compromise proposal. By enacting the tax increase and the forgiveness of interest payments, we project that the \$2.5 billion debt of the trust fund will be retired by the year 2007. This means that we will restore the integrity and stability of the Black Lung Program, which provides critical relief to the retired miners who suffer from the crippling disease of pneumoconiosis.

I extend my heartfelt thanks to all of my colleagues who listened to the views of those who are concerned about the future of the coal industry and the Black Lung Program. Specifically, I am indebted to the distinguished chairman and ranking minority leader of the Senate Finance Committee for listening to various points of view and recommendations on this critical matter. They appropriately felt an obligation to tackle the financial problems of the black lung trust fund, and in the end helped to enact a positive and responsible approach to reach this critical objective.

Finally, I commend my fellow colleagues representing West Virginia. The minority leader of the Senate played an active role in developing the final compromise. And in the House of Representative Congressman Nick Joe

RAHALL was pivotal in enlisting the support of conferees on this matter.

I fervently hope that the provision included in the reconciliation legislation will quickly restore the financial health of the black lung trust fund. The current deficit threatens the ability of the program to meet its obligations under the law. I am proud that the parties most concerned about the fund—including representatives of coal producing States, the coal industry, and the United Mine Workers of America—have succeeded in winning congressional approval of an equitable plan for insuring the integrity and future of the Black Lung Program.

Mr. NICKLES. Mr. President, today I have the pleasure to discuss important reforms reported by the joint conference on single-employer pension plan termination insurance that are part of the budget reconciliation bill.

This important insurance program, which is administered by a self-financing Government corporation, the Pension Benefit Guaranty Corporation, was created in 1974 to assure that pension benefits earned by workers would be paid even if the employer terminated the plan in an underfunded condition. The program covers about 30 million retired and working Americans in over 100,000 defined benefit plans and is financed by premiums paid by those plans and by liability paid to the PBGC by employers that terminate underfunded plans.

Both the premium rate—currently \$2.60 per plan participant—and the employer liability rules under current law have proven inadequate. The program is now responsible for benefit payments to about 160,000 current and future retirees in about 1,100 terminated plans and has a deficit of over \$1 billion. The conference has agreed on a premium increase to \$8.50 effective January 1, 1986, and reforms to protect this program against unwarranted claims.

A revision of the employer liability rule is central to the reform package. Under current law, an employer is liable to the PBGC for unfunded guaranteed benefits, but the amount of liability is limited to 30 percent of the employer's net worth. The PBGC has historically been able to collect only about 15 percent of plan underfunding through employer liability. The corollary is that the PBGC program affords companies with large unfunded pension obligations relative to net worth the opportunity to shift their pension funding obligations to other companies that keep their plans going and continue to pay PBGC premiums.

Several predecessor bills to increase the PBGC, employer liability recoveries and institute other needed reforms in the program have been introduced by me in the Senate and by various Members in the House over the last several years. One such bill, S. 1227, was ordered reported by the full Senate Labor and Human Resources

Committee in June 1984. This proposed legislation was the basis for the reform package sent to the Budget Committee in September of this year for reconciliation purposes. The joint conference on PBGC insurance reforms had before it two employer liability formulations. The Senate bill and the House Education and Labor formulations are quite identical. They set employer liability at the full amount of unfunded guaranteed benefits. However, where the amount exceeded 30 percent of the employer's net worth, the excess unfunded guaranteed liability would be payable in annual installments equal to 10 percent of the employer's pretax profits. The profits payments would end after 10 years or upon payoff of the plan underfunding, if earlier. The profits interest payment schedule would enable uniform payment terms and minimize the need for PBGC and an employer to negotiate payment arrangements.

After consultation with bankruptcy experts, it became clear that the formulation would not produce sufficient savings for the program. In a bankruptcy proceeding the bankruptcy court is likely to liquidate the PBGC's profits interest claim using very conservative collectibility assumptions consistent with the "fresh start" principle favoring the debtor. Thus the profits interest could easily be undervalued, reducing PBGC's recovery. This is a serious problem with the proposal in view of the fact that about 75 percent of claims against the program occur in the context of bankruptcy proceedings.

Another problem with the proposal is that members of the bankruptcy bar and counsel representing bank lenders have mounted an attack on the status of PBGC's employer liability claim in bankruptcy proceedings. ERISA created an automatic lien in the PBGC's favor for the amount of employer liability that an employer neglects or refuses to pay and accorded this lien tax priority status in bankruptcy proceedings, which assures complete or very sizable recovery. The bankruptcy and bank bar members assert that the PBGC claim does not have tax priority status. They argue that changes in the Federal bankruptcy law which established the new Federal Bankruptcy Code in 1978, deny the PBGC the tax priority status that was intended under ERISA.

The Bankruptcy Code listed the specific types of taxes entitled to priority (see 11 U.S.C. §§ 503(b)(1)(B), 507(a)(7)), whereas ERISA did not specify that PBGC's claim would be treated in the same manner as a particular tax. Section 4068 was amended by the Bankruptcy Reform Act, changing it to conform to Bankruptcy Code language, but leaving the priority language as originally enacted in 1974. The PBGC therefore has continued to file those claims as tax priority

claims under 11 U.S.C. §§ 503(b)(1)(B) and 507(a)(7).

The PBGC has never litigated the status of its employer liability claim under current bankruptcy law. Because 30 percent of net worth is generally a small figure, disputes over PBGC's recovery are settled through negotiation rather than litigated. PBGC did litigate the priority status of its claim in one case under prior bankruptcy law, however, and prevailed.

The conferees were concerned that PBGC's recovery would be reduced to unacceptably low levels if the profit interest were liquidated and discharged as a general creditor claim. We therefore adopted a different formulation by combining features of the Labor Committees' and Ways and Means Committees' proposals.

The conference agreement gives the PBGC, in addition to its current law tax priority claim for 30 percent of net worth, an additional claim for the excess, if any, of 75 percent of unfunded guaranteed benefits over the 30 percent of net worth amount. This additional claim has a general unsecured status in bankruptcy proceedings. Thus the conference agreement is a compromise between the House Ways and Means Committee bill, which would set employer liability at 100 percent of unfunded guaranteed benefits and apply the current law tax priority to the entire amount, and the profits formulation under the House Education and Labor and Senate bills.

The conference agreement does not alter the bankruptcy status of the claim PBGC makes, as plan trustee, for unpaid contributions. As under current ERISA law and the Bankruptcy Code, unpaid contributions that accrue after a bankruptcy petition have administrative expense priority; those that accrue within 180 days before the petition have employee benefit status—subject to the \$2,000 per employee limit on priority employee wage and benefit claims—and remaining unpaid contributions have general unsecured status.

Finally, I would like to comment on the effect of ERISA and the Bankruptcy Code on an employer's right to terminate a plan in a distress termination under the conference agreement. In order to have a distress termination one of three tests must be met by each contributing sponsor and each substantial member of its controlled group. Each such person must be in a liquidation proceeding, in a reorganization proceeding in which the bankruptcy court approves the termination, or in deep financial trouble as demonstrated to the PBGC under specified criteria. The conference agreement makes no change to the existing law regarding the appropriate forum to adjudicate disputes concerning such terminations. The Bankruptcy Amendments and Federal Judicature Act of 1984 added section 157(d) to the Judicial Code providing that a

U.S. District Court shall withdraw and hear disputes where consideration of both bankruptcy law and other Federal laws, such as ERISA, is required.

BUDGET RECONCILIATION

Mr. CHAFEE. Mr. President, the reconciliation package before us represents a great deal of hard work and careful discussion. It also contains an extraordinary number of provisions which might be called extraneous by some, but which are extremely important.

MEDICAID

For several years now, I have been working to reform the Medicaid system. Specifically, I have been working to change the program so that Medicaid funds can be used for community-based long-term care services to our citizens with mental retardation and developmental disabilities.

In the long run, I believe this system is in need of a major overhaul. The current system is biased toward the use of institutional facilities—but we should be working harder to keep handicapped citizens in the community.

True Medicaid reform, such as what I have proposed in my legislation, S. 873—the Community and Family Living Amendments of 1985—may take years to accomplish. In the meantime, there are several interim changes that should be made. We were able to include some of these changes during this reconciliation process.

LIFE SAFETY CODE

Earlier this year, I received complaints about the application of an outdated Life Safety Code by the Department of Health and Human Services from parents and residential providers across the country. Consequently, in the legislation before us there is a provision to require the Secretary of HHS to accept the 1985 Life Safety Code as an acceptable standard for fire safety. This code, while still striving for fire safety, offers greater flexibility in the use of resources within a residence to promote such safety. As a result of this action the Secretary of HHS has already acted to accept the new code.

PUBLICATION OF ICF/MR REGULATIONS

People concerned about intermediate care facilities for the mentally retarded (ICF/MR), have been waiting for 2 years to see new regulations for these facilities. In the reconciliation package, we have included a provision to require the Secretary to publish for comment the current draft of the new ICF regulations within 60 days of passage. These regulations have been more than 2 years in the making, and their publication is long overdue. With this provision, I hope we can move on to a new era of planning based on these new regulations.

MEDICAID WAIVER—DENIALS AND RENEWALS

Since 1981, HHS has offered home and community based care waivers to allow Medicaid moneys to be spent in

specific non-Medicaid facilities. This program, called the Medicaid Waiver Program, has allowed many severely handicapped persons to live in the community rather than in institutions.

However, the process of applying for and receiving a waiver has been so unpredictable, that it discourages many States from applying for a waiver. In an effort to build greater permanence and predictability into the waiver program, I fought for the inclusion of two related provisions: First, a provision that calls for a moratorium on all denials of waiver renewal requests from States, and second, a provision that requires the Secretary to renew those waiver requests it approves for additional 5-year periods rather than the current 3-year periods.

ICF/MR PLANS OF CORRECTION

In recent years, many States have been confronted with the need to renovate old institutions for the developmentally disabled while at the same time trying to develop community based alternatives for those individuals. In many States, this choice between institutions and the community based services has presented a financial hardship. It has forced many States to renovate buildings that they had intended to close.

One of the provisions included in reconciliation would alleviate this problem—in very limited situations. This provision that would allow an institution with a building or wing that is out of compliance to submit a plan of correction that incorporates depopulation of the building or wing over a 3-year period. Among a variety of other limitations, this would be allowed only in situations where the violations are nonlife threatening, and only with the approval of the Secretary.

I do not believe that this option will be used in many situations. The intent here is simply to allow those States which have had successful experiences with community based services the option of expanding on that success. There are many States which simply would not ask for this option, and if they did ask would be denied because they do not have a positive history of community based services and to some extent deinstitutionalization.

Some people are concerned about this provision because they think that States are given too much power. This is not so. The State must request to implement this provision, but the Secretary of HHS must approve the request. This preserves the balance of power between the State and the Federal Government.

Some are also concerned that this provision will let States dump people out of institutions with no programs. I would never introduce such a provision. As it is framed there are a wide variety of requirements and limitations on the use of this provision. For those individuals who are affected, there are a number of safeguards and

requirements which must be met throughout the operation of the plan.

MEDICAID DEMONSTRATION PROJECTS

Many critics of the Medicaid system have stated for years that we can do better and more creative things with the money we are spending. Unfortunately, the Medicaid system is so rigid that it prevents trial attempts at innovative programs.

For this reason, I supported in reconciliation a provision that would allow a "pilot project" in up to four States that would allow for greater flexibility in community residential expenditures. These demonstration projects will allow community based services to be set up on an experimental basis for both the elderly and the developmentally disabled populations.

There are many other provisions dealing with the Medicaid Program in this package. Those outlined above are simply the highlights. All in all, I believe that these provisions represent a substantial step in the attempt to provide a reasonable and rational method of providing long-term care services.

MEDICARE

There were also many changes made in the Medicare Program, most of them were reasonable changes. Some, however, I believe may come back to haunt us. Very few changes in the program were made which will have a direct economic impact on beneficiaries of the Medicare Program. Most of the savings were due to freezes or other restrictions placed on the providers of health care services—such as hospitals and physicians.

I am concerned that if we continue down this path, we will have a health care program for which there are many beneficiaries needing health care services, but few professionals available to deliver those services.

This package cuts the increase in payments to hospitals to a fraction of 1 percent. In addition, it substantially reduces—by close to 50 percent—the amount of reimbursement for indirect education costs to hospitals. I will be watching the effect of these combined reductions carefully to determine whether hospitals are capable of absorbing them.

We also continued a freeze on physician payments, with the exception of a 1 percent increase to what are known as "participating physicians"—those who have agreed to accept assignment in 100 percent of their Medicare patients. I know that there is grave concern among the physicians in my State about the freeze especially because of incredible increases in malpractice premiums during the past year.

It is becoming harder and harder to offer quality health care at the same time reimbursement is reduced. This is just the beginning of the problems we will be encountering in the coming years.

I predict that this body will be spending more and more of its time debating health care issues in the coming years. The problems are just

beginning to surface and they are complex and troubling. There simply are no easy answers.

Next year and the year after and the year after that, when the time comes to produce budget savings, we are going to be faced with some very difficult problems—a growing elderly population which is living longer, long-term care services for that population, rebellion among health care providers who can not continue to absorb the loss resulting from our actions to freeze reimbursement, and the list will get longer.

So, Mr. President, while I am satisfied, generally, with our recommendations in this package, I am also worried about the future. I believe these problems can be resolved, but only if all of us work together with a common goal in mind—quality health care at a reasonable price. It sounds simple, but those of us who are familiar with the problems know that it will not be simple to achieve this goal.

Mr. President, I am delighted to report that this bill includes a funding package for Superfund, the important program to clean up toxic waste sites. My colleagues and I worked long and hard to get this measure included in the bill. What we have is a tax that will raise \$10 billion over the next 5 years. It is a broad-based manufacturers' excise tax. We rejected a waste end tax and have avoided the need to resort to general funds from the Treasury.

This step moves us considerably closer to our goal of completing the process of amending and expanding Superfund. My only regret, Mr. President, is that the funds collected will not be immediately available to revitalize the program. Superfund and all cleanup work has been brought to a virtual standstill since the old tax expired on September 30. These new funds will become available as soon as the House and Senate meet and complete work on a series of pending amendments to the underlying program. At best, that cannot be done until early February 1986. If that effort drags on too long, a short-term, emergency release of funds may become necessary. I am deeply worried that the Superfund Program is becoming a political football. The consequences of playing brinkmanship are unacceptable to me. While political posturing on the importance of Superfund continues, Federal cleanup work has stopped. Long-term cleanup of major sites requires long-term planning and assured funding. This bill will help and I am anxious to move forward with whatever steps are necessary to get the program for cleaning up toxic dumps back on track.

Mr. LAUTENBERG. Mr. President, I rise in support of the reconciliation bill. This bill will cut \$20.5 billion from the deficit this year, \$83 billion over 3 years. Those savings are significant. They are significant because they

reduce the deficit. They are significant because Congress is making them.

Congress is making the decisions. It is making choices. I do not agree with every choice made. But, Congress is making them. It will have to make a great many more. The toughest decisions are yet to come. But, we have begun to make them.

Now, I was distressed to hear that Donald Regan, the President's Chief of Staff, has reportedly said he will urge the President to veto the reconciliation bill. The President is being urged to veto \$83 billion in deficit reductions.

Mr. President, unfortunately, the prospect of a veto of the reconciliation bill is a sign of things to come. It is telling about what the Gramm-Rudman Act will mean.

Under Gramm-Rudman, the Congress gave its power to the President. It surrendered its prerogatives to make choices. For that reason and others, I opposed Gramm-Rudman. Because under Gramm-Rudman, the President can impose across-the-board cuts in spending, not just if Congress fails to cut the deficit, but also if Congress fails to cut the deficit the way the President would like.

Now, Congress has cut the deficit. We just passed a continuing resolution that is \$18 billion below the President's request in budget authority. And now, we are about to pass an Omnibus Reconciliation Act, with program cuts and revenue measures, that will cut the deficit some \$83 billion.

We will send that deficit cut to the President, and the President may veto it. If so, the President would veto deficit cuts made by the Congress, and substitute cuts made with all the care and discrimination of an electric meat slicer.

The President would veto a cigarette tax, as provided in reconciliation, and substitute across-the-board cuts in health care, cancer research, and Medicare.

If so, the President would veto a minimal tariff on imports, designed to support job training for displaced workers, and substitute across-the-board cuts in those very same.

He would veto a broad-based tax to support an enlarged and more effective Superfund, as provided in reconciliation, and substitute across-the-board cuts in toxic waste cleanup.

The President would veto cuts in what we pay banks to service guaranteed student loans, as provided in reconciliation, and substitute instead across-the-board cuts in the loans we pay students.

That is what we face, Mr. President. That would be Gramm-Rudman at work.

Mr. President, I support reconciliation because it is a significant step toward deficit reduction. It also includes changes in law that are critical to my State and to the Nation.

Mr. STAFFORD. Mr. President, I would like to say immediately that I

am dismayed by the conference report on budget reconciliation as it affected Superfund. I refused to sign the conference report.

I am dismayed because of the provisions dealing with Superfund. Or, perhaps more accurately, not dealing with Superfund.

The tax which supports Superfund expired on September 30.

This bill will enact a new tax, designed to raise \$10 billion over 5 years. But for reasons I do not understand, although the money will be collected it cannot be spent.

If this bill becomes law, not one red cent will be available to the Superfund Program tomorrow than is available at this very instant.

The conferees have chosen to prohibit the expenditure of that money, as it has been explained to me, to keep the pressure on the House and Senate conferees to produce a substantive reauthorization of the Superfund law. Supposedly an imminent deadline is needed to achieve this.

Mr. President, the Committee on Environment and Public Works reported a Superfund bill in September of 1984, when the taxing deadline was 1 year away. When that bill died in the Finance Committee, we reported a bill again on March 1 of this, when the deadline was 6 months away. The House last year passed a bill when the deadline was nearly 18 months away.

I suggest, Mr. President, that what is required is not deadlines, but action. The conferees had the chance to take that action, but didn't. It is a tragedy that the conferees had the opportunity to keep this program running but chose not to do so.

This unique approach of collecting taxes, but not spending them was, I have been told, first suggested by the House conferees. In that context, Mr. President, I would like to observe that even though the House passed a Superfund bill 10 days ago and requested a conference, the conferees have yet to be appointed and the Senate is yet to receive the message from the House. Because of this, it is likely that the entire holiday recess will be lost. Reportedly, the appointments have been prevented because of a struggle for representation on the conference committee.

Mr. President, the Superfund Program is dead in the water. Contracts are in jeopardy, construction has been halted, and investigations have been slowed. All we are now paying for are emergencies and salaries.

If Superfund is defined as the program that the country had on August 1, 1985, then it no longer exists. This bill presented the opportunity to revive it, but the conferees not only failed to seize opportunity, but rejected it outright.

UNIFORM MINIMUM DRINKING AGE

Mr. LAUTENBERG. Mr. President, I rise to bring the attention of my colleagues a provision in this bill which I consider to be of national importance.

That provision makes permanent the Uniform Minimum Drinking Age Act of 1984. This law, Public Law 98-363, requires that States raise their minimum drinking age to 21 by October 1, 1986, or risk the loss of Federal highway assistance.

The provision included in reconciliation makes the withholding of highway funds permanent. This amendment to existing law is made necessary by the attempts of a small number of States to evade the intent of the law by sunseting their 21 laws in 1988 when Federal withholding is scheduled to end. This provision also ends the reimbursement of withheld funds at the close of fiscal year 1988. The provision also includes two lenient provisions. One allows States to phase in their 21 laws and be in compliance with Federal law provided they do so expeditiously. The other extends the availability of highway funds withheld so that States will not simply lose funds when they lapse under the normal procedures of the highway law.

The opponents of this law and the amendments to it, included in this legislation, have stressed the punitive aspects of the law. I want to emphasize the compassionate nature of this bill. The purpose of this law is not to withhold highway funds; it is to save the lives of hundreds of young Americans every year on our highways. Its purpose is to close the blood borders that separate States with differing minimum drinking ages which provide an incentive for young people to drive in order to drink. Far too many of them do not make it home and their parents, their brothers, sisters and loved ones suffer the pain. This law does not put an end to drunk driving, but it will help hundreds of families to avoid the loss of a son or daughter.

Mr. President, this week has been designated by President Reagan as "National Drunk and Drugged Driving Awareness Week." How fitting it is that the Congress has the opportunity to close the loopholes in the Uniform Minimum Drinking Age Act this week.

Reconciliation, Mr. President, is essentially an authorization bill. This provision belongs in an authorization bill. I have worked closely with the committee of jurisdiction, the Committee on Environment and Public Works, to craft this provision. This provision is a compromise worked out by the committees of authorization in the House and Senate.

Mr. President, this provision is of critical importance to such groups as the National Safety Council, Mothers Against Drunk Driving and PTA's throughout the Nation. This provision is supported by Secretary of Transportation, Elizabeth Dole, and the Reagan administration.

Mr. President, I introduced this provision in July with the cosponsorship of my friend and colleague, Senator JOHN DANFORTH, the able chairman of

the Committee on Commerce, Science and Transportation. Senator DANFORTH has been steadfast in his support for this measure.

Finally, Mr. President, I want to recognize the contribution of the chairman of the House Public Works and Transportation Committee, Representative JIM HOWARD of my State of New Jersey, for his extensive efforts to bring about a uniform minimum drinking age of 21 in this Nation. Without him, this law would not be on the books and these amendments would not be possible.

I also extend my thanks to the staff of the House Public Works and Transportation Committee. Caryl Rinehart, Dick Sullivan and Clyde Woodle have lent their expertise to this effort and I thank them.

Mr. MURKOWSKI. Mr. President, I rise today in support of the adoption of the conference report and final passage of H.R. 3218, the Omnibus Budget Reconciliation Act of 1985. As chairman of the Committee on Veterans' Affairs, I am pleased that the conferees on title XIX of H.R. 3218 regarding veterans' programs have been able to work out a fair and equitable compromise, one which will meet the savings targets required under our reconciliation mandate and which will result in significant reforms in VA health care delivery.

The provisions contained in the conference agreement include the establishment of income eligibility criteria for VA health care, the authorization of reimbursement under health insurance contracts, a 3.1 percent—percent cost-of-living adjustment [COLA] for veterans in receipt of service-connected disability compensation and related benefits, an epidemiological study of the health of women veterans, and evaluation of the needs of native-American veterans including Alaska Natives and a waiver of congressional notice-and-wait period for administrative reorganization of certain automated data processing functions.

Both the House- and the Senate-passed bills contained the establishment of new eligibility criteria and income thresholds for certain non-service-connected veterans and third-party reimbursement for non-service-connected veterans who are furnished VA health care. Both the House- and the Senate-passed versions also contained a provision to cap the service-connected disability compensation COLA.

Mr. President, I am extremely pleased with the spirit of cooperation and dedication to the resolution of these issues that was evidenced by all the conferees and their staff. I particularly want to thank G.V. (SONNY) MONTGOMERY, chairman of the House Veterans' Affairs Committee, and JOHN PAUL HAMMERSCHMIDT, ranking minority member of the House Veterans' Affairs Committee, and their staffs, as well as Senator CRANSTON,

the ranking minority member of this committee and his fine staff.

The most significant differences in the House- and Senate-passed bills were found in the policies contained in the proposed income eligibility criteria. The differences were especially significant in how to treat eligibility for VA health care and the level of co-payment that should be required for veterans who were deemed able to pay.

HEALTH-CARE ELIGIBILITY

Mr. President, the revisions proposed by the Senate-passed bill regarding eligibility for VA health care would have prioritized the care to indicate the Nation's commitment to service-connected disabled and impoverished veterans. Inpatient and outpatient care would have been prioritized in the same manner and nursing home care would have been prioritized to ensure that VA nursing care beds would be available first for those who need the highest level of care. The Senate-passed bill would have established an across-the-board income threshold of \$25,000 for non-service-connected veterans and required the medicare deductible every 60 days for veterans being furnished hospital care or nursing home care within a 1-year period. Veterans who would have been furnished outpatient care and who were over the income threshold would have paid 20 percent of the average cost of VA outpatient visit.

Mr. President, I believe that although we have moved toward the House's position in many aspects of this bill, the House was also willing to modify its position regarding entitlement to health care as well as the co-payment for those veterans who have non-service-connected disabilities and who do have the ability to contribute toward their care.

Under the conference agreement, nine categories of veterans "shall" be furnished needed hospital care in VA facilities and may be furnished such care, if currently authorized, in Non-VA facilities. These categories of veterans would include all service-connected disabled veterans, so-called special statutory categories—including POW's, veterans exposed to Agent Orange or radiation—and veterans of World War I and earlier conflicts, as well as other non-service-connected veterans with incomes not exceeding \$15,000 for a veteran with no dependents and \$18,000 for a veteran with no dependents and \$18,000 for a veteran with one dependent, plus \$1,000 for each additional dependent. By establishing a new "shall" category for these veterans seeking hospital care the Congress has indicated its strong feeling that these categories of veterans should have the highest priority and that they should be furnished needed care to the extent that beds are available and funds have been appropriated.

The statement of managers indicates that the conferees clearly intend that

for the above-mentioned categories, the VA's sole obligation is:

First, if a veteran is in immediate need of hospitalization, to furnish and appropriate bed at a VA facility where the veteran applies, or if none is available three, to furnish a contract bed if authorized in section 603 or arranged to admit the veteran to the next closest VAMC, or DOD facility with which the VA has a sharing agreement, with an available bed; or Second, if the veteran needs nonimmediate hospitalization, to schedule the veteran for admission where the veteran applied, if the schedule permits, or refer the veteran for scheduling and admission to the nearest VAMC, or DOD facility with which the VA has a sharing agreement, with an available bed and facilitate the veteran's admission there.

That is the extent to which current law would be modified with respect to the word "shall". The reason that the conferees included this language in the statement of managers was to make perfectly clear that although we have taken a major step in requiring the VA to care for these high priority categories of veterans, the VA is not expected to plan additional or expanded services or space to care for such veterans. We believe the VA does have the capacity to treat these nine categories. If such a veteran applies and there is no space, the conferees expressed the view that the VA will make every attempt to ensure that such a veteran be treated at another VA facility that provides similar services.

This legislation would not change current law or practice regarding the beneficiary travel program. I wish to emphasize that the intent of having veterans referred from one hospital to another was not to increase the cost to beneficiary travel but to increase the possibilities that veterans would receive needed care as soon as possible. There is no requirement that beneficiary travel be paid in such instances.

As far as a concern that has been raised that using the word "shall" would create an entitlement to VA care that would circumvent the appropriations process, the VA's general counsel has informed us that no such entitlement would be created. I ask unanimous consent that the general counsel's white paper on this eligibility issue be included in the Record at this point.

There being no objection, the materials was ordered to be printed in the Record, as follows:

PROPOSED AMENDMENTS TO SECTIONS 610 AND 612—IS AN "ENTITLEMENT" CREATED

Both the House and Senate versions of the Budget Reconciliation Act (H.R. 3500 and S. 1730) contain the so called "means test/third party reimbursement" legislation which would alter the eligibility of veterans to receive VA health care benefits. Both the House and Senate bills would amend 38 U.S.C. §§ 610 and 612, to provide that the Administrator "shall furnish" hospital care and outpatient medical services to certain veterans. The Senate bill also provides that nursing home care "shall" be furnished to those same veterans. Under existing law, the Administrator "may furnish" such care.

Both bills also delete existing language in sections 610 and 612 providing that care may be furnished only within the limits of VA facilities. The changes made by these bills have given rise to the question: Will certain veterans be "entitled" to receive VA health care benefits, and what does that mean?

Generally, the term "entitlement" connotes a right to receive something, or to do something, with the scope of the right varying according to the legal authority creating it. See generally *Words and Phrases*, Volume 14A, pages 388-395 (1952 ed) and Supp. pg. 18 (1985). Entitlements may take many forms, but this paper is primarily concerned with what may be characterized as "statutory entitlements."

A review of case law reveals that the terms "entitlement" and "statutory entitlement" are used very loosely and imprecisely by the courts. Research has not revealed an instance of a court's defining the terms specifically. However, based on a review of cases using the term "entitlement," this paper posits the following definition: "Statutory entitlement" is a right, not subject to the discretion of an agency official, to receive a payment, a good, a service, or some other right from the government on the basis of meeting eligibility criteria established by statute or implementing regulations. As discussed below, however, the identification of an interest in a benefit as a statutory entitlement does not in itself indicate that the "entitled" parties have an absolute right to, and can enforce receipt of, that benefit.

The concept of a statutory entitlement appears to embody two principal elements: first, the right must be defined in a law or regulation, and, second, the law or regulation must leave little if any discretion to government officials to determine whether or not the benefit will be provided. The term "entitlement" is most commonly used in the case law in the context of constitutional procedural due process cases involving individuals or groups seeking to show the presence of a "property interest" which cannot be abridged except by due process of law. Thus in *Goldberg v. Kelly*, 397 U.S. 254 (1970), the court stated that welfare benefits "are a matter of statutory entitlement for persons qualified to receive them." *Id.* at p. 262. In *Board of Regents v. Roth*, 408 U.S. 564 (1972), the court states that to have a property interest, an individual must have "a legitimate claim of entitlement." *Id.* at 577. The *Roth* Court clearly stated that a property interest or "entitlement" is defined by the source that created the interest. Thus, the court stated: Thus, the welfare recipients in *Goldberg v. Kelly*, supra, had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them. *Id.* at 577.

There is some case law to suggest that a statute or regulation which vests significant discretion in government officials in connection with provision of the benefit does not confer an entitlement. In *Ingram v. O'Bannon*, 534 F. Supp. 385 (E.D. Pa. 1982), a case in which plaintiffs claimed an absolute right to benefits, the court held that no entitlement existed where, despite language in the state's regulation defining eligibility for services on the basis of specific financial and medical need, other regulatory provisions vested broad discretion in Agency officials to determine how benefits would be provided. Indeed, the statutory scheme and applicable regulations in that case allowed the state to define the entitlement as permitting the decision by State officials to determine provision of the benefit under priority list which, in fact, denied the benefit

to individuals otherwise meeting eligibility criteria. *Id.* at 389.

Consequently, the Court stated, "This regulations (sic) negates any allegation that when demand surpasses availability, applicants have a legitimate expectation that the state will increase funding of the program to ensure that all applicants receive the service." *Id.* The statutory scheme did "not create an entitlement to the service or at most, create[d] an entitlement to receive the service as it is available." *Id.* Similarly, in *Riverview Investments v. Ottawa Community Investment Corp.*, 789 F.2d 324, 327 (6th Cir. 1985), the court held that the substantial discretion vested in State officials to administer a program (municipal bond) defeated any claim to an entitlement to have such bonds issued, even though other applicants had received the benefits of the issuance of the bonds. See also *Moore v. Johnson*, 582 F.2d 1228 (9th Cir. 1978). Contrast *Alexander v. Polk*, 572 F. Supp. 605 (E.D. Pa. 1983), a case in which plaintiffs claimed an entitlement to benefits to the extent funding is available. There the court held that an entitlement existed in a statutory supplemental food benefit program, to the extent funds were available, even though officials had authority to limit the benefit when adequate funds were not available to provide the benefit to all eligible individuals. While the *Polk* case demonstrates that the law is by no means certain with respect to what constitutes a property interest establishing a right to due process, it does not suggest that a statutory entitlement is an absolute right to that property.

The question has been posed as to whether the proposed amendments to sections 610 and 612 of title 38, United States Code, in the House and Senate Budget Reconciliation bills, create entitlements. In determining precisely what benefits are granted by the statute, and whether the individual is statutorily entitled to them, attention must be paid to all of the statutory limitations on the grant of the benefits. Existing sections 610 and 612 use the words "may furnish" in describing the Administrator's authority to provide health care benefits to veterans. Those words are susceptible to an interpretation that the Administrator has virtually unlimited discretion to determine whether or not to provide care or services to eligible veterans.

That interpretation was supported in an opinion prepared by the Office of Legal Counsel, Department of Justice, dated December 7, 1982. The proposed changes to sections 610 and 612 would certainly alter and limit the Administrator's discretion to decide not to provide care to certain categories of veterans, but the changes do not foreclose all discretion, or "entitle" every otherwise eligible veteran (who "shall" be provided care) to receive whatever care or services are deemed desirable or even determined necessary. Generally speaking, we believe the proposed change from "may" to "shall" would only mandate that if VA facilities and resources are available and capable of providing needed care and services, the Administrator must furnish the care and services to any eligible veteran able to present himself or herself at the VA facility to receive the care.

The major limitation on the provision of benefits is the fact that VA facilities and resources are limited. At the present time, facilities simply do not exist to provide all types of health care benefits to all veterans eligible to receive those benefits, particularly under the House bill, and both the Senate and House bill continue to impose stringent limitations on the provision of contract care in non-VA facilities. Furthermore, VA's ability to acquire or construct

new medical facilities is constrained by statutory provisions. For example, any significant VA construction project must be approved by the Congress pursuant to 38 U.S.C. § 5004, before money may be appropriated for the project. Finally, as discussed below, the proposed bills do not create new spending authority (entitlement authority) such that one might argue (not necessarily successfully) that Congress must appropriate funds to construct facilities to meet the needs of all eligible veterans. Accordingly, under the House bill, for example, VA will be able to provide care and services within the limits of its facilities and resources, and eligible veterans can have no clear assurance of receiving needed care in every instance.

In addition to the basic availability of resources limitation, both the House and Senate bills grant, or leave in place a significant breadth of discretion in the Administrator to determine whether to provide all eligible veterans with health care benefits. First, the care sought by a veteran must be "needed" by the veteran (House bill) or "reasonably necessary" (Senate bill). VA regulations and manual provisions treat this eligibility criteria in essentially absolute terms, i.e., a veteran either does or does not need medical care. However, the requirement that care be needed can also be viewed, particularly under the pending House bill, (which on its face places all but non-needy, non-service-connected veterans on an equal footing as to eligibility and priority for care in VA facilities) as permitting the Administrator to assess need in relative terms, e.g., degree of urgency of need in relation to VA capabilities. Thus, if resources are extremely limited, the Administrator could conceivably determine that only limited types of health care services can be said to be "needed." If an outpatient clinic is full, perhaps only emergency services could be deemed "needed" for a new applicant.

Additionally, neither the House nor the Senate bill alters the existing language of 38 U.S.C. § 621. That section grants the Administrator authority to promulgate regulations governing, and limiting, hospital, nursing home, and domiciliary care. Section 621 is generally thought of as granting necessary authority to allow efficient administration of the medical system. However, it grants significant discretion to the Administrator to determine that care will not be provided in certain instances. In instances where VA lacks the capacity or facilities to meet the demand for health care benefits, this authority would, for example, allow the Administrator, under the House bill, to deny immediate care to certain categories of veterans, and place them on waiting lists for care in the future. (The Senate bill provides specific priority provisions, of course.)

It should also be noted that the House bill proposes to add a new subsection (g) to section 610. This new provision would explicitly recognize the Administrator's existing discretion "to determine—

(A) The appropriateness of furnishing medical services, therapies, or programs under this chapter; or

(B) In what manner they will be furnished.

A veteran seeking care from the VA can only expect to receive the care and services authorized by the law. Clearly the "entitlement" to be enjoyed by the beneficiaries of these bills is encumbered by significant limitations. Although individuals have used the word "entitlement" to describe the benefit that the House-passed measure would provide, we find no basis to conclude that individual non-service-connected veterans, e.g., can have more than a unilateral expectation

of receiving VA care whenever they need it. Although we do not foresee the likelihood that service-connected veterans under the Senate bill would be denied needed VA care, it is not clear that veterans can compel the Agency to provide care as a matter of statutory entitlement.

As a final matter, we address the question of whether the proposed changes to sections 610 and 612 would invoke any legal requirement that the Congress appropriate funds sufficient to assure that VA facilities would be constructed and resources made available to provide health care benefits to all eligible veterans who seek them. We do not believe the changes invoke any such authority.

Under the Congressional Budget Act of 1974, Congress may create what is termed "entitlement authority." Entitlement authority is defined in section 401(c) of the Act (2 U.S.C. § 651(c)(2)(C)) as the authority:

(C) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law.

The language in the above provision, "the United States is legally obligated to make such payments," (Emphasis added), implies that the funds must be paid to beneficiaries, and that funds for payment must be appropriated by the Congress. In our view, however, neither the proposed House or Senate changes to sections 610 and 612 would create entitlement authority, so no legal obligation can arise. The first element in the definition of entitlement authority is met in that VA health care benefits are authorized by sections 610 and 612, not by appropriations acts. However, the other statutory elements of entitlement authority are not. First, health care benefits are not payments, they are services. Second, there are limitations and areas of discretion on the provision of the health care benefits, as discussed above, not provided in the authorizing law. An individual cannot expect and is not assured of receiving the sought after benefits simply by meeting the statutory eligibility requirements.

Even if we assume that the amendments to sections 610 and 612 were to create entitlement authority, or a statutory entitlement, we question whether that would absolutely require the Congress to appropriate funds to meet the obligation. In fact, Congress might actually decide to terminate an entitlement program by failing to provide funds. Thus, in *Local 2577 AFGE v. Phillips*, 358 F. Supp. 60 (D.D.C. 1973), the court noted:

An authorization does not necessarily mean that a program will continue. Congress, of course, may itself decide to terminate a program before its authorization has expired, either indirectly by failing to supply funds through a continuing resolution or appropriation, or by explicitly forbidding the further use of funds for the programs. . . . *Id.* at 75.

Relying on that case, our office has held that a statutory entitlement is limited by the availability of the necessary appropriations.

Mr. MURKOWSKI. Mr. President, the Statement of Managers also includes language to highlight the intent that title XIX of the Congressional Budget and Impoundment and Control Act of 1974 would continue to apply. Under this legislation the use of the term "shall" is intended to en-

hance the eligibility of the specified veterans but not intended to diminish the status of all other categories of veterans eligible for care under current law. The VA would continue to be required to provide such needed care to all eligible veterans if resources have been appropriated and remain available. But the use of the term "shall" does not require that any specified level of appropriations be made and it is certainly my intent to underline that an entitlement as defined under the Congressional Budget Act has not been created.

Except for those deemed able to defray the cost of care, other non-service-connected veterans will continue to have the same eligibility for health care as under current law. The VA will continue to have discretionary authority to treat them on a space-available basis. Non-service-connected veterans with incomes above \$20,000 for a single veteran and \$25,000 for a married veteran with one dependent plus \$1,000 for each additional dependent will be furnished care on the basis of an agreement to make a modest copayment, and if resources and facilities are otherwise available. The conferees categorically rejected the Administration's proposed means test and spend down theory in favor of a more equitable and less onerous approach which grants access to health-care irrespective of income.

Mr. President, under the conference agreement outpatient care and nursing home care eligibility would remain the same as current law. I greatly regret that the House would not accept the Senate's provisions to prioritize eligibility for both inpatient and outpatient care. In my view, such an approach clearly would have provided service-connected and impoverished veterans with the highest priority for care.

Mr. President, in initiating a copayment for veterans who have been determined able to contribute a modest amount to the cost of their care, the conferees have taken a major step in redefining the parameters of VA care for certain non-service-connected veterans. It is important to remember that this country owes a great debt to veterans who served and sacrificed for their country. This legislation ensures care for veterans with service-connected disabilities and impoverished veterans. However, we also have to remember that resources are not unlimited and we face enormous deficits. The recent enactment of the so-called Gramm/Rudman balanced budget amendment certainly emphasizes the fact that the Congress and the country recognize the need to control spending and have taken an important step toward that end. I believe that this legislation responsibly meets the level of savings required of both the Senate and House Veterans' Affairs Committees.

The Administration's original proposal for a means test contained an

\$11,400 income cut-off for a single veteran and required a strict spend down of income by veterans above this threshold prior to becoming eligible for medical care. That approach was rejected by both the House and the Senate. Instead, we have income thresholds which are more realistic in terms of family income standards, and incorporated provisions which permit veterans with incomes over that threshold to use the VA if facilities and resources are available based on an agreement to contribute toward their care. The income threshold agreed to by the conferees combines both the Senate's across-the-board \$25,000 threshold and the House's approach of having different thresholds for single and married veterans. These thresholds are clearly spelled out in the statement of managers accompanying the conference agreement.

Mr. President, under the conference agreement, a veteran being furnished hospital care and who is deemed not unable to defray the expense of care, would be required to pay the Medicare deductible, currently \$492, for the first 90 days, and half of that deductible for each succeeding additional 90 days of care, within a 12-month period. The same deductible would apply for veterans who are furnished VA nursing home care. The conference agreement does provide; however, that if the veteran had been transferred from a VA hospital to a nursing home, the veteran's initial \$492 payment would apply for the nursing care until the expiration of the 90-day period. For outpatient and home-health care, veterans deemed able to pay would contribute a per visit payment of 20 percent of the VA average daily rate not to exceed the Medicare deductible for each 90-day period. All of the inpatient payments during each 90-day period would count toward the outpatient cap.

The adoption of income eligibility criteria is not only a reflection of the budgetary constraints facing the Congress, but also a commitment to continue to care for the nine categories of veterans defined by this legislation and an endorsement of the continuation of a comprehensive VA health-care system by allowing non-service-connected veterans with higher incomes to continue to have access to the VA system in return for a small partial payment.

THIRD PARTY REIMBURSEMENT

Mr. President, H.R. 3281 contains a provision, which for the first time, would achieve parity between the VA and private health care providers. This legislation would authorize prospectively reimbursement to the Federal Government under health-insurance contracts for the reasonable costs of health care and services furnished by the VA to non-service-connected veterans who have health insurance. Most health insurance plans and contracts contain exclusionary clauses which

bar reimbursement to the United States for care provided by the VA. Recoveries under this provision are not intended in any way to reduce the annual appropriation for the VA health care system as all recoveries will be deposited into the U.S. Treasury. Both the House and the Senate have agreed on the basic policy on this issue and agree that a veteran who is otherwise insured must be allowed to use those insurance benefits for VA care as well as for private care.

The provisions contained in the Senate and House reconciliations bills were very similar. The conference agreement incorporates the essence of both the Senate and House provisions, several of which I would like to highlight.

This provision would require the Administrator to prescribe regulations which would govern the determination of the reasonable cost of care or services.

The regulations to be prescribed for determining the reasonable cost of care or services shall also provide that the determination of "reasonable cost" may not exceed an amount equal to that which the third party would pay for such care or services under prevailing rates of payment to non-Federal facilities in the same geographic area as the VA facility in which the care or services are furnished.

This provision would not, in any way, restrict an eligible veteran's access to VA health-care, nor would it require a veteran to pay any deductible or copayment required under the terms of an insurance contract in order to receive care.

The provision would also specify that a veteran's failure to pay a deductible or copayment required under the terms of an insurance contract would not preclude the Government from recovering from the third party; however, the amount of the recovery would be reduced by the amount(s) of the deductible or copayment. This provision would also authorize, subject to certain restrictions, a third party to inspect medical records of a health-plan beneficiary for whom recovery is sought, in order to enable the third party to verify that the care or services were furnished and meet the criteria generally applicable under the health-plan contract.

Finally, the VA would also be required to submit to the Congress reports on the implementation and results of the amendments made under this provision.

The third-party reimbursement provision contained in the conference agreement reflects certain recommendations made by private health insurers, concerning the constitutionality of such a provision with respect to existing insurance contracts, and the adequacy of cost-containment measures within the VA health-care system.

SERVICE-CONNECTED DISABILITY COMPENSATION
COLA

Mr. President, the compromise would provide a 3.1-percent COLA to our Nation's service-connected disabled veterans and their dependents and survivors effective December 1, 1985. This COLA is the same as that provided to VA pension and Social Security recipients, also effective December 1, 1985. Due to the inability of the House and Senate to reach agreement on an omnibus compensation and veterans' benefits bill before adjournment sine die, the House and Senate Veterans' Affairs Committees have agreed to include the compensation COLA in the Reconciliation bill in order not to delay any further the enactment of a COLA for service-connected veterans.

ADMINISTRATIVE REORGANIZATION

In April 1985, the VA Administrator selected McManis Associates Inc. to prepare an implementation plan for the modernization of DVB information management systems. Their plan was released on October 25, 1985. It suggested certain reforms for the modernization of the current benefits delivery system. Based on this report, the Administrator has proposed a reorganization of certain automated data processing functions. In a letter to me, dated November 1, 1985, as chairman of the Senate Veterans' Affairs Committee, the Administrator has requested a waiver of the notice and wait period required by section 210(B)(2) of title 38, United States Code. I believe giving those responsible for VA benefit payments authority over the data processing resources is a first step in the reforms necessary to improve VA data processing. I ask unanimous consent that the letter be printed in the RECORD.

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

VETERANS ADMINISTRATION OFFICE
OF ADMINISTRATOR OF VETERANS
AFFAIRS,

Washington, DC, November 1, 1985.

Hon. Frank H. Murkowski,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The purpose of this letter is to report a planned administrative reorganization within the Veterans Administration (VA) involving the transfer of certain functions from the Office of Data Management and Telecommunications (ODM&T) to the Department of Veterans Benefits (DVB).

As you are aware, under the Congressional "report and wait" requirements of 38 U.S.C. § 210(b)(2), a detailed plan and justification must be submitted to the appropriate committees of Congress for certain VA administrative reorganizations involving a reduction during any fiscal year by 10 percent or more in the number of full time equivalent employees (FTEE) at a VA covered office or facility. The report must be made not later than the date on which the President submits his budget for the next fiscal year. Thereafter, no action can be taken to implement the reorganization until the first day of that fiscal year. Thereafter, no action can be taken to implement the reorganization until the first day of that fiscal year. This

is submitted in order to satisfy the above-reporting requirement for a planned VA organizational transfer of certain automated data processing (ADP) functions as described below.

As you are aware, in April 1985, the Veterans Administration selected McManis Associates, Inc., to prepare an implementation plan to modernize the DVB benefits and services delivery systems. This plan was to be consistent with my policy statement mandating the full modernization of the Agency's data processing and communications systems so as to improve the quality of service provided to veterans and their families. The McManis study among other things found that there was limited end-user involvement in system design and development, limited systems training, and that there were inconsistent system utilization management practices. Based on these findings, I approved the McManis recommendations that DVB should have the authority, resources and responsibility for the systems development and greater operational oversight within overall agency standards and policy guidelines. Implementation of this recommendation requires the administrative reorganization which is the subject of this letter.

We propose to reorganize in order to move ADP program specialists closer to the DVB program specialists, and give DVB a greater role in ADP decisions. By giving DVB control of ADP resources, they will be able to better focus ADP expenditures on service delivery priorities. This reorganization will involve 362 ODM&T full time equivalent employees (FTEE). These organizational transfers will occur at VA Central Office (VACO), and at the Austin, Texas; Hines Illinois; and Philadelphia, Pennsylvania VA Data Processing Centers (DPC). The number of FTEE transferred as the result of this reorganization and the base 1986 ODM&T FTEE at each facility, are as follows: VACO—81/441; Austin—75/663; Hines—146/406; and Philadelphia—60/197.

The functions performed in the positions to be transferred are unique to the support of DVB programs and, after this transfer to DVB, ODM&T will no longer perform these functions. These functions, and the stations at which they are performed, are as follows: VACO—Benefits Automation Service, which designs all ADP programming for DVB, and some administrative support personnel; Austin DPC—Benefits Delivery System Division, which does programming for DVB in the areas of loan guaranty, the Beneficiary Identification and Records Location Subsystem (BIRLS), and debt collection (beginning in fiscal year 1986); Hines DPC—System Support Divisions, which handle programming for DVB benefits programs, such as Compensation and Pension, Education, and Vocational Rehabilitation, and which prepare the computer tapes for the Department of the Treasury to use in issuing benefits checks; and Philadelphia DPC—Systems Division, which does programming for VA applications. There will also be transferred, at each of the above stations, the functions of that part of the systems verification and testing element which performs systems quality control for the programming done by the benefits delivery system staff at each of these stations.

It is clear from the foregoing that this reorganization is simply an organizational transfer of employees. These employees will not be relocated to other stations. The great majority of them will experience no change in their functions, personnel status, immediate supervision, or even in the location of their workspace. Accordingly, there will be

little or no cost impact as the result of this reorganization.

We believe that this reorganization is appropriate and advisable, and that it will have the desired effect of improving and making more efficient DVB benefits delivery systems by giving DVB direct control over the resources used for its ADP support. This reorganization has already been the subject of DVB briefings with staff of the House and Senate Veterans' Affairs Committees. Of course, we would be pleased to provide any additional information which you may desire concerning this reorganization.

I request your assistance in introducing, and supporting enactment of, a legislative waiver of the 38 U.S.C. §210(b)(2) waiting period for this reorganization, so that these improvements in our organizational structure can be made as soon as possible. Suggested language for such a legislative waiver is enclosed. Absent such a waiver, we must wait until fiscal year 1987 to implement this reorganization.

I appreciate your support for our efforts to improve benefits delivery for our Nation's veterans.

Advice has been received from the Office of Management and Budget that there is no objection to the presentation of this letter and legislative proposal from the standpoint of the Administration's program.

Sincerely,

HARRY N. WALTERS,
Deputy Administrator.

SUGGESTED LANGUAGE FOR WAIVER OF THE WAITING PERIOD FOR DVB AUTOMATED DATA PROCESSING ADMINISTRATIVE REORGANIZATION

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Notwithstanding the waiting requirements of section 210(b)(2) of title 38, United States Code, the Administrator of Veterans Affairs is authorized to immediately transfer to the Department of Veterans Benefits the DVB-related automated data processing delivery systems and related functions as follows: VA Central Office, Washington, D.C.—Benefits Automation Service, which designs all ADP programming for DVB, and some administrative support personnel; Austin, Texas—Benefits Delivery System Division, which does programming for DVB in the areas of loan guaranty, the Beneficiary Identification and Records Location Subsystem, and debt collection; Hines, Illinois—System Support Divisions, which handle programming for DVB benefits programs, such as Compensation and Pension, Education, and Vocational Rehabilitation, and prepare computer tapes for benefits checks; and, Philadelphia, Pennsylvania—System Division, which does programming for VA applications. There will also be transferred, at each of the above stations, the functions of that part of the systems verification and testing element which performs systems quality control for the programming done by the benefits delivery system staff at each of these stations.

Mr. MURKOWSKI. Mr. President, under current law the VA may not, in any fiscal year, implement a reorganization involving a more than 10-percent reduction in the number of full-time equivalent employees at any VA facility with more than 25 employees unless the Administrator, not later than the date on which the President submits the budget for that year, provides "A report containing a detailed plan and justification for the reorgan-

ization." The "notice and wait" provisions of section 210(b)(2) of title 38 would delay the implementation of the proposed reorganization until the next fiscal year. This bill would provide a waiver of the notice and wait requirement so that VA may proceed immediately with the proposed reorganization.

I strongly believe that DVB does have data processing problems which require immediate attention. This waiver would allow VA to reorganize immediately and to proceed with the process of implementing needed reforms. The General Accounting Office [GAO] is studying VA's data processing capabilities as well as the recommendations of McManis Associates. GAO has informally expressed concerns about hardware and software procurement plans recommended by the McManis Study and the lack of comprehensive data processing planning on the part of the VA. I endorse the proposed reorganization in the belief that it will establish a structure conducive to reform. However, in doing so, I strongly urge the VA Administrator, Harry Walters, to work with the committee and the GAO to ensure that data processing reforms are well thought out and carefully planned. I will be monitoring closely DVB's progress in improving its data processing systems to meet the agency's and the Congress' needs for timely and accurate information in the most cost effective and efficient manner.

SAVINGS ESTIMATE

The Congressional Budget Office has indicated that total savings from the enactment of the income eligibility criteria third party reimbursement and the 3.1-percent COLA will be in excess of \$1.26 billion over the next 3 years, which is more than \$100 million more than our mandated reconciliation savings. These savings have been achieved without the reduction of any program or service to our Nation's veterans and will, in fact, serve as a model of the commitment to the Nation to continuing to provide needed health care to eligible veterans.

CONCLUSION

In closing, I want to note once again my thanks to my distinguished counterpart on the House Veterans' Affairs Committee, **SONNY MONTGOMERY** as well as the ranking minority member of this committee, **ALAN CRANSTON** and **JOHN PAUL HAMMERSCHMIDT**, the ranking members of the Senate and House Veterans' Affairs Committees. The staffs have worked hard and very closely to work through the small details as well as some rather large policy differences on certain issues to come up with a very fair and well balanced compromise. I especially want to thank **Mack Fleming**, chief counsel of the House Veterans' Affairs Committee, his staff, **Pat Ryan**, **Jack McDonnell**, **Victor Raymond**, **Arnold Moon**, and **Charles Peckarsky**, as well as **Rufus Wilson**, the minority chief counsel of the House Veterans' Affairs

Committee and **Kingston Smith**; **Jon Steinberg**, Senator **CRANSTON's** chief counsel and his fine staff, **Ed Scott**, **Bill Brew**, **Babette Polzer**, **Nancy Billica**, and **Ingrid Post**, who is one of the most dedicated workers I know of in the Senate. A special thanks to **Bob Cover**, House legislative counsel, who labored tirelessly to perfect the bill language. Last, but certainly not least, I want to thank my own fine staff headed by **Anthony Principi**, chief counsel, and including **Cathy McTighe**, **Cynthia Alpert**, **Lisa Moore**, **Julie Susman**, **Judy Boertlein**, **Jody Sanders** and **Kay Eckhardt**. Mr. President, I urge the adoption of the conference report and final passage of the Omnibus Reconciliation Act of 1985.

Mr. President, I ask unanimous consent that the statement of managers of title XIX be printed in the RECORD.

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

TITLE XIX—VETERANS' PROGRAMS

On October 24, 1985, the House passed H.R. 3500, the proposed "Omnibus Budget Reconciliation Act of 1985". Title X of the bill included the provisions of H.R. 1538, ordered reported by the House Committee on Veterans' Affairs on September 11, 1985, to satisfy its reconciliation instructions contained in section 2 of the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32).

On November 14, the Senate passed H.R. 3128, the proposed "Deficit Reduction Amendments of 1985", after striking out the House-passed text and inserting in lieu thereof the text of S. 1730, title XI of which contained the legislation reported by the Senate Committee on Veterans' Affairs to satisfy its reconciliation instructions in section 2 of the FY 1986 budget resolution.

On December 5, the House amended the Senate-passed H.R. 3128 by inserting the House-passed texts of H.R. 3500 and H.R. 3128, and requested a conference with the Senate. Title X of H.R. 3500 as it originally passed the House was redesignated as Title X (sections 1951-1982) of Division A of the House amendment to the Senate amendment to H.R. 3128.

The following material refers to the Senate amendment to H.R. 3128 as the "Senate bill", to the House amendment to the Senate amendment as the "House bill", and to title XIX of the Reconciliation Act conference report as the "conference agreement".

SUBTITLE A—HEALTH CARE

Both the House bill (section 1972) and the Senate bill (sections 1101-07) would, as discussed below, amend chapter 17 of title 38, United States Code, to revise existing eligibilities for health care furnished by the Veterans' Administration, and to establish a "health-care income threshold" for purposes of determinations of eligibility based on "inability to defray" the cost of needed care.

The conference agreement (section 19011) contains such provisions as discussed below.

HOSPITAL CARE

House bill

The House bill would amend the eligibility requirements, set forth in present section 610(a) of title 38, for veterans seeking VA hospital care. The six categories of veterans eligible for such health care under current law would be revised and restated as nine

separate categories, and the separate basis of eligibility for non-service-connected veterans 65 years of age or older (without regard to income) contained in current law would be eliminated.

Under the House bill, the Administrator would be required to furnish hospital care determined by the Administrator to be necessary to:

- (1) any veteran for a service-connected disability;
- (2) a veteran discharged for a disability incurred or aggravated in line of duty;
- (3) a veteran entitled to receive disability compensation;
- (4) a veteran disabled as a result of VA treatment or vocational rehabilitation;
- (5) certain Vietnam veterans exposed to certain toxic substances and veterans exposed to ionizing radiation from nuclear explosions;
- (6) former prisoners of war;
- (7) veterans of the Spanish American war, Mexican border period, or World War I; and
- (8) veterans who are unable to defray the expenses of necessary care.

The current limitation on furnishing hospital care "within the limits of Veterans' Administration facilities" would no longer be applicable to these eight categories of eligible veterans.

A veteran would be eligible for necessary medical care under category (8) if the veteran's family's income in the 12 months preceding the application for care was not greater than 3.34 times the maximum annual rate of VA pension payable to totally disabled veterans (referred to below as the "health-care income threshold"). In determining the incomes of veterans for the purpose of this category, the administrator would be required to use the same methods and criteria used to determine annual income (including taking into account family income) for the purposes of VA improved pension eligibility under chapter 15 of title 38, United States Code. The maximum income level for health care would be increased each year by the same percentage increase applicable to the maximum pension rate. Thus, as of the time the House passed the bill, the "health care income threshold" would be \$19,038 for a veteran with no dependents and \$24,977 for a veteran with one dependent, plus \$3,253 for each additional dependent. On December 1, 1985, the VA pension income standard increased by 3.1 percent, by virtue of present section 3112(c) of title 38, United States Code, and reference to the consumer price index.

The House bill would establish, as a ninth category of veterans eligible for hospital care, those seeking care for treatment of non-service-connected disabilities who do not fall into one of the eight other categories. Thus, this last category would consist of those veterans whose income and assets exceed the health-care income eligibility threshold. They would be required to make an annual payment equal to the Medicare deductible (\$492 in 1986) in order to receive needed care. Such care could be provided only "within the limits of Veterans' Administration facilities."

The House bill would also provide that nothing in these provisions would (1) require the Administrator to furnish hospital care in a facility other than a VA facility or to furnish care to a veteran to whom another agency of a Federal, State, or local government has a duty to provide care in an institution of that government, or (2) restrict the Administrator's discretion to determine the appropriateness of furnishing medical services, therapies, or programs under chapter 17 of title 38 or in what manner they will be furnished.

Senate bill

The Senate bill would create three categories of eligibility for hospital care. Under the first category, the Administrator would be required to furnish hospital care determined to be reasonably necessary for service-connected disabilities and for any disability of veterans who have service-connected disabilities rated at 50 percent or more. This care would be required to be furnished through VA facilities or, to the extent authorized, through non-VA facilities except in the case of a veteran under incarceration as to whom the Administrator could (1) decide not to furnish care in a VA facility if to do so would not be feasible in terms of the security that would be necessary and (2) provide care under contract in a non-VA facility to the extent authorized.

Under the second category, which would remain essentially unchanged from current law (except that the separate basis of eligibility for veterans 65 years of age or older would be eliminated), the Administrator would be authorized, through VA facilities or, to the extent authorized, through non-VA facilities, to furnish reasonably necessary hospital care to veterans with service-connected disabilities rated at less than 50 percent; veterans who, but for the receipt of retired pay, would be entitled to disability compensation; veterans who are eligible for compensation for disabilities incurred as VA patients or as participants in a VA vocational rehabilitation program; veterans who were discharged from military service for disabilities incurred or aggravated in the line of duty; former prisoners of war; Vietnam veterans exposed to certain toxic substances and veterans exposed to ionizing radiation from nuclear explosions; Spanish American War, Mexican border period, or World War I veterans; and veterans unable to defray the cost of necessary care.

Under the third category, the Administrator would have the authority, through VA facilities or, to the extent authorized, through non-VA facilities, to furnish, to the extent facilities and resources are otherwise available, reasonably necessary hospital care for the non-service-connected disability of a veteran not included in categories one or two whose annual family income for the calendar year preceding the veteran's application for care exceeds \$25,000 and who agrees to make certain payments to the United States in connection with such care. In determining the incomes of veterans for the purpose of this category, the Administrator would be required to use the same methods and criteria used to determine annual income (including taking into account family income) for the purposes of VA improved pension eligibility. Further, the Administrator would be given authority to prescribe regulations defining the circumstances under which a non-service-connected veteran having an annual income or estate above a certain level would be ineligible for VA care.

Conference agreement

The conference agreement (section 19011(a)) generally follows the House provision. It would establish two groups of VA health-care eligibilities. Under the first group, the conference agreement would require the Administrator to furnish needed hospital care through VA facilities, and authorize the Administrator to furnish needed hospital care in non-VA facilities as authorized, to the first eight categories from the House bill except that the third category from the House bill is subdivided into two categories—veterans with service-connected disabilities rated at 50 percent and above and any other veterans who have service-connected disabilities. The ninth category

of veterans would consist of veterans who are unable to defray the expenses of necessary care—those who are receiving chapter 15 VA improved pension or are eligible for Medicaid or whose annual family incomes do not exceed the "Category A threshold" (\$15,000 for veterans with no dependents and \$18,000 for veterans with one dependent with an increase of \$1,000—approximately equal to the amount of the VA pension) allowance (\$999 as of December 1, 1985)—for each additional dependent. These amounts would be increased on January 1 of each year (beginning January 1, 1987) by the same percentage by which VA chapter 15 improved pension benefits are increased on the preceding December 1 (pursuant to section 3112 of title 38).

The conferees intend that, for the categories of veterans specified in section 610(a)(1) of title 38 (as revised by this section)—those to whom the Administrator is required to furnish hospital care—the VA's sole obligation with respect to needed hospital care for these veterans is (1) if a veteran is in immediate need of hospitalization, to furnish an appropriate bed at the VA facility where the veteran applies or, if none is available there, to furnish a contract bed (as authorized under current law as recodified in new section 603) or to arrange to admit the veteran to the nearest VA medical center (VAMC), or Department of Defense facility with which the VA has a sharing agreement, with an available bed, or (2) if the veteran needs non-immediate hospitalization, to (A) schedule the veteran for admission where the veteran applied, if the schedule there permits, or (B) refer the veteran for scheduling and admission to the nearest VAMC, or DOD facility with which the VA has a sharing agreement, with an available bed and facilitate the veteran's admission there. The VA, of course, as also noted above, would also retain any existing discretionary authority to furnish health-care to these veterans.

Also, if there are 2 or more veterans applying for the same bed at a particular facility on a non-emergent basis and one is seeking care for a service-connection disability or has a 50-percent-or-more service-connected disability, the conferees intend that that veteran should receive the bed. With respect to the remaining veteran, he or she, as noted above, would be scheduled for the next available bed at the VA facility where the veteran applies or, if none is available there, would be furnished a contract bed (as authorized under current law as recodified in new section 603) or arrangements would be made (1) to admit the veteran to the nearest VA medical center (VAMC), or Department of Defense facility with which the VA has a sharing agreement, with an available bed, or (2) if the veteran needs non-immediate hospitalization, to (A) schedule the veteran for admission where the veteran applied, if the schedule there permits, or (B) refer the veteran for scheduling and admission to the nearest VAMC, or DOD facility with which the VA has a sharing agreement, with an available bed and facilities the veteran's admission there. The VA, of course, as also noted above, would also retain any existing authority to furnish health-care to that veteran.

The conference agreement (section 19011(a)) would provide for a second eligibility group as to which the Administrator "may," through VA facilities and through non-VA facilities as authorized, furnish needed hospital care to the extent that resources and facilities are available, to non-service-connected veterans with incomes above \$15,000 for those with no dependents and \$18,000 for those with one dependent,

plus \$1,000 for each additional dependent. For those non-service-connected veterans with incomes above the "Category B" threshold (\$20,000 for those with no dependents and \$25,000 for those with one dependent, plus \$1,000 for each additional dependent), the Administrator "may", through VA facilities and through non-VA facilities as authorized, and to the extent that resources and facilities are otherwise available, furnish needed hospital care if the veteran agrees to make certain payments to the VA in connection with that care. Each of these amounts would be increased on January 1 of each year (beginning January 1, 1987) in accordance with the VA pension-COLA increase percentage.

The conference agreement further includes a provision specifying that nothing in section 610 of title 38, relating to eligibility for hospital and nursing home care (as revised by the conference agreement), requires the VA to furnish care to a veteran to whom another government entity has a legal duty to provide care in a government institution—for example, this would apply to an incarcerated veteran.

With respect to the revisions in hospital-care eligibility, the conferees intend that care be furnished to service-connected disabled veterans, low-income veterans, and, to the extent resources are available, other eligible veterans.

The conferees note with approval the statements made by the Chairman and Ranking Minority Member of the Senate Committee on Veterans' Affairs during the debate on the Senate bill (pages S. 15467 and S. 15471, respectively, of the CONGRESSIONAL RECORD for November 14) with respect to the effect of the use of the word "may" in providing VA health-care eligibility (in current law and the revised eligibility provisions) from the standpoint that the term does not connote discretion, on the part of the Administration, to withhold funds appropriated for the furnishing of care or, on the part of the VA, to withhold needed care that the VA has the capacity to provide. As indicated there, and the conferees agree, the amount of care that the VA provides to eligible veterans necessarily depends upon the level of funds appropriated for that purpose.

The conferees further note that this legislation would not change current law or practice regarding the beneficial travel program.

The conferees recognize that in some cases it may not be readily determined with certainty, at the time that the veteran first applies for VA care during a calendar year, to which eligibility category the veteran belongs. Thus, where necessary to avoid delaying medical attention beyond the point at which it may be needed, the conferees intend that the VA make tentative eligibility-category determinations based on the available evidence at the time, subject to modification when a final determination can be made.

Also, in light of the uncertainties that may exist at the time of application and in view of the fact that even determination based on apparently sufficient information may need to be changed on the basis of new evidence, the conferees expect the VA to require at least those veterans applying for VA care for the first time during a calendar year to sign an agreement to make the payments required by law if it is ultimately determined, by reason of their income during the preceding calendar year and any other matters relating to eligibility, that their eligibility is contingent upon their agreeing to make such payments. Of course, the agreement should also state what those payment amounts are.

In a similar vein, the conferees note that veterans with annual incomes above the applicable income threshold for payments would generally be eligible for care or services only upon the veterans (or someone authorized to act for him or her) agreeing to pay for those services before they are furnished. However, the VA has full authority under current section 611(b) to furnish hospital care or medical services in emergency cases and to charge appropriately for such care, and the conferees stress that this emergency authority would be applicable in the case of a veteran in this category of eligibility who is unable to execute such an agreement prior to the commencement of care. What, if any, payments the veteran would ultimately be required to make would, of course, depend on the eligibility determination made after the fact.

The conferees expect that the form used for the agreement to pay would clearly state eligibility criteria as well as potential liability.

NURSING HOME CARE

House bill

The House bill would provide that the VA "may within the limits of Veterans' Administration facilities" furnish nursing home care to the nine categories of veterans eligible for hospital care (as discussed above) under the House bill. Those veterans having incomes above the applicable "health-care income threshold" in the House bill could be furnished nursing home care if they agreed to make certain prescribed payments in connection with their care.

Senate bill

The Senate bill would provide the Administrator, through VA facilities or through non-VA facilities as authorized, "shall" furnish nursing home care determined to be reasonably necessary for a service-connected disability and "may" furnish nursing home care determined to be reasonably necessary for any veteran having hospital care eligibility under the Senate bill (as discussed above). Those having incomes above the applicable health-care income eligibility threshold in the Senate bill could be furnished nursing home care if they agreed to make certain prescribed payments in connection with their care.

Conference agreement

The conference agreement (section 19011(a)) makes no change in VA nursing home care eligibilities in current law except to provide that non-service-connected veterans with incomes above the "Category B threshold" would be eligible only upon agreeing to make certain payments in connection with their care.

DOMICILIARY CARE

House bill

The House bill contained no provision regarding eligibility for VA domiciliary care.

Senate bill

The Senate bill would authorize the Administrator to furnish reasonably necessary domiciliary care through VA facilities to veterans who are determined by the Administrator to be incapacitated from earning a living and to have no adequate means of support.

Conference agreement

The conference agreement makes no change in VA domiciliary care eligibilities in current law.

In leaving current law intact regarding domiciliary-care eligibility, the conferees are not expressing their satisfaction with the status quo. Both Committees on Veterans' Affairs plan to hold hearings next year to consider appropriate revisions to the eligi-

bility for domiciliary care as provided by section 610(b)(2) of title 38.

OUTPATIENT TREATMENT AND HOME HEALTH SERVICES

House bill

The House bill would require the Administrator to furnish outpatient treatment to those veterans with outpatient treatment eligibility under current law, but would also specify that there is no requirement to furnish services to those non-service-connected disabled veterans with incomes that exceed the applicable health-care income eligibility threshold discussed above (under the heading "Hospital Care") unless they agree to make payment in connection with such services.

The House bill would make no change in eligibility for home health services except to provide that the eligibility of a non-service-connected veteran whose income exceeds the health-care income eligibility threshold would be contingent upon the veteran's agreement to make payment in connection with such services.

Senate bill

The Senate bill would amend current law to require the Administrator—"shall" rather than "may" as in current law—to furnish (directly or by contract) outpatient treatment and home health services determined to be reasonably necessary to any veteran for a service-connected disability and for any disability of a veteran with a service-connected disability rated at 50 percent or more, except in the case of a veteran under incarceration as to whom the Administrator could (1) decide not to furnish care in a VA facility if to do so would not be feasible in terms of the security that would be necessary and (2) provide care under contract in a non-VA facility to the extent authorized. Otherwise, the Senate bill would not modify current eligibilities for outpatient treatment and (except to increase the maximum amount that may be expended for home structural alterations from \$600 to \$2,500 for a veteran with a 50-percent-or-more-service-connected disability) home health services except to specify that non-service-connected disabled veterans with incomes above the applicable health-care income eligibility threshold would be eligible only upon agreeing to make payment in connection with such treatment or services and to the extent that resources and facilities are otherwise available.

Conference agreement

The conference agreement (section 19011(b)) would make no change in current law eligibilities relating to outpatient treatment or home health services (except with respect to the cap on home health structural alterations payments, described above) except to provide that non-service-connected veterans with incomes above the Category B threshold (discussed below under the heading "INCOME THRESHOLDS") would be eligible only upon agreeing to make payment in connection with such treatment or services and to the extent that resources and facilities are otherwise available.

AMOUNT OF PAYMENTS

Both the House and Senate bills contain provisions to specify the amounts that veterans with incomes above the income thresholds must agree to pay in order to be eligible for VA health care.

House bill

The House bill would establish payment requirements as follows:

Hospital care or nursing home care, or both: During any 12-month period, the lesser of the cost of furnishing the care or

the amount of the inpatient Medicare deductible in effect at the beginning of the applicable 12-month period (\$492 in 1986).

Outpatient treatment: For each visit (except for outpatient services furnished to complete treatment following hospitalization), the amount equal to 20 percent of the estimated average cost of an outpatient visit to a VA facility during the fiscal year in which the treatment is furnished.

During any 12-month period, a veteran would not be required to pay in total for any mode of care or combination of modes of care an amount greater than the amount of the inpatient Medicare deductible.

Senate bill

The Senate bill would establish payment requirements as follows:

Hospital care or nursing home care, or both: For each 60 days of care during an episode of care (a period beginning on the first day of hospital or nursing home care and ending at the close of the first period of 60 consecutive days thereafter during which the veteran receives neither hospital nor nursing home care), the lesser of the cost of furnishing the care or the amount of the inpatient Medicare deductible in effect when the care is furnished.

Outpatient treatment: For each visit, the amount equal to a percentage—the Percentage that Medicare generally does not pay for such treatment (20 percent at present)—of the estimated average cost of an outpatient visit in a VA facility during the fiscal year in which the treatment is furnished.

Conference agreement

The conference agreement (section 19011(a)(2) and (b)(2)(F)) contains provisions specifying, in the cases of veterans who must agree to make payments in order to be eligible for VA health care (those with incomes above the Category B level), the amounts that they must pay, as follows:

Hospital care: During any 365-day period (1) for the first 90 days of care (or part thereof), the lesser of the cost of furnishing the care or the amount of the inpatient Medicare deductible in effect at the beginning of the 365-day period, and (2) for each succeeding 90 days of care (or part thereof), the lesser of the cost of furnishing the care or one-half of the amount of that inpatient Medicare deductible.

Nursing home care: During any 365-day period, for each 90 days of care, the lesser of the cost of furnishing the care or the amount of the inpatient Medicare deductible.

Outpatient treatment: For each outpatient or home health visit, the amount equal to 20 percent of the estimated average cost of an outpatient visit to a VA facility during the fiscal year in which the treatment is furnished, but not to exceed during any 90-day period the amount of the inpatient Medicare deductible in effect at the beginning of that period.

Combination of hospital and nursing home care: In the case of a veteran who pays the inpatient-Medicare-deductible amount in connection with VA-furnished hospital or nursing home care and who, before using 90 days of the initial mode of care (hospital or nursing home) within a 365-day period, is furnished the other mode of care, the veteran would not be required to make any payment for the second mode until either (1) the number of days of hospital and nursing home care combined exceed 90, or (2) the beginning of the next 365-day period, whichever occurs first. If the veteran pays an amount equal to one-half of the inpatient-Medicare-deductible amount in connection with receiving hospital care (as when the veteran is receiving more than 90 days of hospital care in a 365-day period)

and, before using 90 days of hospital care within the applicable 365-day period, receives VA-furnished nursing home care, the veteran would be required to pay one-half of the deductible amount in connection with the number of days of nursing home care that, when added to the hospital days, do not exceed 90 within that 365-day period.

Payments for combinations of outpatient treatment and hospital and nursing home care: A veteran would not be required to pay an amount greater than the inpatient Medicare deductible in connection with any combination of outpatient and inpatient care furnished during any 90-day period.

The conferees stress that the legislation makes no change in current eligibility for contract hospital, nursing home, or outpatient care and the way that eligibility is applied and intend the Administrator to ensure that expenditures for veterans eligible for care by virtue of agreeing to make payment to the VA have the lowest priority for the use of funds available for contract care as well as the lowest priority for inpatient, outpatient, and nursing home care furnished through VA facilities.

PRIORITIES

House bill

The House bill would repeal the provision, section 612(i) of title 38, requiring the Administrator to implement through regulations the priorities specified in that section for the furnishing of outpatient treatment.

Senate bill

The Senate bill would require the Administrator to prescribe regulations to ensure the implementation of priorities specified in the Senate bill in the furnishing of hospital, domiciliary, and nursing home care and medical services and would require the Administrator to ensure that no guideline, regulation, or other VA issuance has the effect of encouraging the furnishing of care or services in any way inconsistent with such priorities to a veteran whose eligibility is based on agreement to make payments.

Conference agreement

The conference agreement does not contain any such provisions related to priorities except a provision (in section 19011 (b) (4)) adding veterans in receipt of VA improved pension under chapter 15 of title 38, as a new, sixth priority for outpatient care under present section 612(i).

INCOME THRESHOLDS

House bill

The House bill would amend section 622 of title 38, relating to evidence of veteran's "inability to defray the cost of necessary expenses" in connection with establishing eligibility for VA health care, so as to provide that (in addition to veterans in receipt of any VA pension benefits or eligible for Medicaid) a veteran shall generally be presumed to be "unable to defray" the cost of care if the veteran's family income for the 12-month period preceding the veteran's application for care was equal to or less than 3.34 times the maximum annual rate of improved pension payable to totally disabled veterans under chapter 15 of title 38 (as increased annually pursuant to section 3112 of title 38). Thus, this income threshold amount at the time the House bill was passed was \$19,068 for veterans with no dependents and \$24,977 for veterans with one dependent, plus \$3,233 for each additional dependent. In determining a veteran's annual family income, the Administrator would consider the same items and sources of income and would allow the same exclusions as are considered and allowed under the improved pension program.

Senate bill

The Senate bill would amend section 622 to provide generally that (in addition to veterans in receipt of any VA pension benefits or eligible for Medicaid) a veteran shall be determined to be "unable to defray" the cost of care if, during the calendar year preceding the date of the veteran's application for care, the veteran's family income is not greater than \$25,000 and would provide for that amount to be increased by the same percentage and at the same time as each cost-of-living adjustment is made in chapter 15 VA improved pension benefits pursuant to section 3112 of title 38. In determining a veteran's annual family income, the Administrator would be required to consider the same items and sources of income and to allow the same exclusions as are considered and allowed under the improved pension program.

The Senate bill would also provide the Administrator with discretionary authority, in order to avoid hardship, to increase the above-mentioned income level for a specified geographic area.

Conference agreement

The conference agreement (section 19011(c)) would amend present section 622 to provide generally that a veteran shall be determined to be unable to defray the necessary expenses of hospital care if the veteran receives VA improved pension or is eligible for Medicaid, or if, during the calendar year immediately preceding the veteran's application for care, the veteran's family income is not greater than \$15,000 for a veteran with no dependents or \$18,000 for a veteran with one dependent, plus \$1,000 for each additional dependent.

A veteran would be considered not able to defray the necessary expenses of care and thus liable for making certain payments for care (discussed above under the heading, "AMOUNT OF PAYMENTS") if the veteran's family income exceeds the Category B threshold—is greater than \$20,000 for a veteran with no dependents or greater than \$25,000 for a veteran with one dependent, plus \$1,000 for each additional dependent. Each of the above amounts would be increased on January 1 of each year (beginning January 1, 1987) by the percentage that chapter 15 VA improved pension benefits are increased, pursuant to section 3112(a) of title 38, effective the preceding December 1.

In determining a veteran's annual income, the Administrator would be required to consider the same items and sources of income and to allow the same exclusions as are considered and allowed under the chapter 15 VA improved pension program.

CONSIDERATION OF ASSETS IN DETERMINING ELIGIBILITY

House bill

The House bill would provide that the Administrator may refuse to determine that the veteran is unable to defray necessary medical expenses if the veteran or the veteran's immediate family has sufficient assets so that, under all the circumstances, it is reasonable that some part of those assets be consumed for the veteran's maintenance.

Senate bill

The Senate bill would provide that the Administrator shall not determine that a veteran is "unable to defray" the cost of care if the veteran or the veteran's immediate family has sufficient assets so that, under all the circumstances, the Administrator finds it unreasonable to make that determination. In determining the amount of assets, the Administrator would be required to consider the same items as the Ad-

ministrator considers in determining the amount of assets for purposes of the chapter 15 improved pension program.

Conference agreement

The conference agreement (section 19011(c)) follows the House bill. In determining a veteran's assets for this purpose, the Administrator would be required to consider the same items as the Administrator considers in determining the amount of assets for purposes of the chapter 15 VA improved pension program.

CERTAIN ADJUSTMENTS OF INCOME ELIGIBILITY DETERMINATIONS

The conference agreement (revised section 622(b) of title 38) would enable the Administrator to adjust a veteran's income threshold status where necessary in order to avoid hardship to the veteran in certain cases in which the veteran's income has dropped off substantially from the preceding calendar year amount.

REPORTS

Both the Senate bill (section 1108) and the House bill (section 1975) would require the Administrator of Veterans' Affairs to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives reports relating to the furnishing of health care to veterans after the enactment of this Act.

The conference agreement (section 19011(e)) would blend the Senate and House reporting requirements, with three annual reports due by February 1 of 1987, 1988, and 1989, and require the Administrator to include in the reports information regarding the numbers and characteristics of, and health care furnished to, veterans (and amounts of payments by them where appropriate) who are eligible for VA care by reason of any of the proposed new income threshold criteria, and the numbers of and health care furnished to veterans in each of the other categories of eligibility, with breakdowns. In the case of such veterans with service-connected disabilities, for each percentile disability rating.

TECHNICAL REVISION OF AUTHORITY TO CONTRACT FOR HOSPITAL CARE AND MEDICAL SERVICES

The Senate but not the House bill (1) would delete section 601(4)(C) of title 38, which includes within the definition of "Veterans' Administration facilities"—and thus, in conjunction with provisions in section 610 and 612, authorizes the VA to contract for hospital care or medical services with—private facilities in certain cases when VA facilities are not capable for furnishing economical care because of geographical inaccessibility or of furnishing the care of services required, and (2) replace that provision with a new section 603, which would recodify current law under section 601(4)(C), for purposes of clarity, without making any substantive change.

The conference agreement (section 19012) follows the Senate provision.

RECOVERY BY THE UNITED STATES OF THE COST OF CERTAIN HEALTH CARE AND SERVICES

Both the Senate bill (section 1111) and the House bill (section 1973) would amend present section 629 of title 38, United States Code—relating to the United States' authority to recover under workers' compensation laws or plans, from automobile accident reparation (auto no-fault) insurers, and from crime-victim compensation programs the reasonable costs of VA-furnished non-service-connected health care to the extent that the insurer or program would be liable to a non-Federal provider—so as (1) to add authority for the United States to recover from a third party under a health-plan con-

tract (a defined term that includes, for example, health-insurance policies) the reasonable costs of VA care furnished to a veteran who does not have a service-connected disability and is entitled to care or reimbursement for care from the insurer; (2) to require the Administrator to prescribe regulations to govern determinations of the reasonable cost of care or services; (3) expressly to authorize the Administrator to compromise, settle, or waive claims of the United States under section 629; (4) specify that money collected under section 629 shall be deposited in the Treasury; and (5) to provide for the changes in existing law made by amendments to section 629 to apply prospectively, that is, only with respect to care furnished after the date of enactment and only with respect to health-plan contracts that are entered into, renewed, or modified after the date of enactment.

The conference agreement (section 19013) contains these provisions.

The conferees note that, in revising the wording of existing provisions of section 629 pertaining to recovery under workers' compensation laws or plans, from automobile accident reparation insurers, and from crime-victim compensation programs, the conferees do not intend to make any substantive revisions in current law or in its application or to overrule any judicial interpretations of these provisions.

The Senate bill, but not the House bill, would delete from section 629(b) provisions specifying that the amount that the United States may recover under that section may not exceed the lesser of (1) the reasonable cost of the care involved as determined by the Administrator, or (2) the maximum amount specified by applicable State or local law or by any relevant contractual provision.

The conference agreement (revised section 629(a)(1) of title 38) follows the Senate provision.

The conferees agree that, in light of the provisions in section 629(a) providing for recovery by the United States of the reasonable cost of the VA-furnished care "to the extent" that the veteran (or the provider of the care) would be eligible for payment for the care had it been furnished by a non-Federal provider, the provisions being deleted are surplusage.

The Senate bill, but not the House bill, would specify, in the case of a health-plan contract containing the requirement for payment of a deductible or copayment by the veteran, (1) that the veteran's not having paid the deductible or copayment with respect to VA-furnished care does not preclude recovery under section 629, (2) that the amount that the United States may recover under section 629 shall be reduced by the appropriate deductible or copayment amount, or both, and (3) that a veteran eligible for VA care shall not be required by reason of section 629 to make any copayment or deductible payments in order to receive such care.

The conference agreement (revised section 629(a)(3)) contains these provisions.

The Senate bill, but not the House bill, would (1) require the Administrator, before prescribing the regulations for determining the reasonable cost of care or services (discussed above), to consult with the Comptroller General of the United States; (2) require the Comptroller General, within 45 days after the regulations (or any amendment to them) are prescribed, to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives the Comptroller General's comments on and recommendations regarding such regulations (or amendments); and (3) require that the regulations provide that in no event

may such reasonable cost exceed an amount equal to what the third party would pay for the care or services under the prevailing rates applicable under its contracts with non-Federal facilities in the geographic area in which the VA facility that provided the care or services is located.

The conference agreement (revised section 629(c)(2)) follows the Senate amendment.

The House bill, but not the Senate bill, would provide the Administrator with express authority to enter into agreements with health-plan contractors for the purpose of determining reasonable costs.

The conference agreement does not contain this provision.

The conferees note that the Administrator is already authorized by section 213 of title 38, relating to the Administrator's authority to enter into contracts for necessary services, to enter into such agreements.

Both the Senate and the House bills would require that the medical records of a health-plan beneficiary for the cost of whose care recovery is sought be made available for the purpose of enabling the third party to verify that the care for which recovery is sought was furnished. The Senate bill, but not the House bill, would also provide that the records shall be made available under such conditions to protect their confidentiality as the Administrator shall prescribe in regulations and that the records may also be made available to permit the third party to verify that the provision of the care involved meets criteria generally applicable under the health-plan contract.

The conference agreement (revised section 629(h)) follows the Senate bill.

The Senate bill, but not the House bill, would require the Administrator to submit to the Committees on Veterans' Affairs a 6-month report and annual reports on the process for and results of the implementation of the amendments to section 629.

The conference agreement would require two such reports, one due not later than 6 months after the date of enactment and the other, to provide information through at least the end of fiscal year 1987, due not later than February 1, 1988.

MEDICARE PROVIDERS' ACCEPTANCE OF VETERANS' ADMINISTRATION BENEFICIARIES AT MEDICARE RATES

The House bill (section 1974), but not the Senate bill, would amend chapter 17 of title 38, United States Code relating to VA health care, to insert a new section 625 to require non-Federal providers of hospital services under the Medicare program to accept VA beneficiaries on a basis similar to that on which they accept Medicare beneficiaries; to require those providers to accept VA payments made in accordance with VA regulations as payment in full; to authorize the Administrator to report violations of these requirements to the Secretary of Health and Human Services; and to authorize the Secretary to terminate a provider's participation in the Medicare program on the basis of such violations.

The conference agreement does not contain this provision.

SUBTITLE B—COMPENSATION RATE INCREASES DISABILITY COMPENSATION

House bill

The House bill (sections 1962 through 1964) would amend chapter 11 of title 38, United States Code, relating to compensation for service-connected disability, to increase by 3.7 percent, effective December 1, 1985, the basic rates of service-connected disability compensation for veterans, the rates payable for certain severe disabilities,

the dependents' allowances payable to veterans rated 30 percent or more disabled, and the annual clothing allowance for certain disabled veterans.

Senate bill

The Senate bill (section 1121) would limit the fiscal year 1986 disability compensation COLA to a maximum of 3.7 percent—the same percentage that the Congressional Budget Office projected for the fiscal year 1986 Social Security/VA pension cost-of-living adjustment at the time the Senate Veterans' Affairs Committee reported its reconciliation recommendations to the Senate Budget Committee. Thereafter, on December 2, 1985, the Senate passed S. 1887 providing (in sections 101 through 103) for a 3.1-percent increase, the same percentage as the actual percentage increase for the Social Security/VA pension cost-of-living adjustments, effective December 1, 1985.

Conference agreement

The conference agreement (sections 19031 through 19033) would increase these rates and allowances, effective December 1, 1985, by 3.1 percent.

DEPENDENCY AND INDEMNITY COMPENSATION

House bill

The House bill (sections 1965 through 1967) would amend chapter 13 of title 38, relating to dependency and indemnity compensation (DIC) for service-connected deaths, to increase by 3.7 percent, effective December 1, 1985, rates of DIC payable to the surviving spouses and children of veterans whose deaths were service connected.

Senate bill

The Senate bill (section 1121) would limit the fiscal year 1986 DIC increases to a maximum of 3.7 percent—the same percentage that the Congressional Budget Office projected for the fiscal year 1986 Social Security/VA pension cost-of-living adjustment at the time the Senate Veterans' Affairs Committee reported its recommendations to the Senate Budget Committee. S. 1887 as passed by the Senate provided for a 3.1-percent COLA.

Conference agreement

The conference agreement (sections 19034 through 19024) would amend chapter 13 to increase these rates, effective December 1, 1985, by 3.1 percent.

SUBTITLE C—MISCELLANEOUS PROVISIONS

EPIDEMIOLOGICAL STUDY OF FEMALE VIETNAM VETERANS

The House bill (section 1982), but not the Senate bill, would require the Administrator to provide for the conduct of an epidemiological study of any long-term adverse gender-specific health effects in female Vietnam veterans that may result from their exposure to Agent Orange or to other phenoxy herbicides and would authorize the Administrator to expand the scope of the study to evaluate any long-term adverse gender-specific health effects in females resulting from other aspects of service in Vietnam. However, the Senate, on December 2, 1985, passed a similar provision in S. 1887, the "Veterans' Compensation and Benefits Improvements Act of 1985", (section 507), that would, unless determined not to be scientifically feasible, require the Administrator to provide for the conduct of a female Vietnam veterans health-experience study and permit investigation of any long-term adverse health effects which may have resulted from traumatic experiences, exposure to phenoxy herbicides (including Agent Orange), or other experience or exposure.

The conference agreement (section 19021) follows the Senate provision.

ADVISORY COMMITTEE ON NATIVE-AMERICAN VETERANS

The House bill (section 1981), but not the Senate bill, would provide for the establishment of a VA Advisory Committee on American-Indian Veterans to examine and evaluate VA programs and activities with respect to the needs of American-Indian veterans and to transmit reports on its examinations and evaluations to the Administrator of Veterans' Affairs for subsequent transmittal to the Congress. However, on December 2, 1985, the Senate passed a comparable provision in S. 1887, the "Veterans' Compensation and Benefits Improvements Act of 1985" (section 505), which would provide for the establishment of a VA Advisory Committee on Native American Veterans (including Alaska Natives).

The conference agreement (section 19022) contains such a provision, blending together aspects of the two provisions, naming the Advisory Committee the "Advisory Committee on Native-American Veterans" and specifying that representatives of American Indians and of other Native Americans each would serve on the Committee.

WAIVER OF WAITING PERIOD FOR ADMINISTRATIVE REORGANIZATION OF CERTAIN VETERANS' ADMINISTRATION AUTOMATED DATA PROCESSING ACTIVITIES

The conference agreement (section 19023) also contains a provision that would waive the waiting period prescribed by section 210(b)(2) of title 38—which provides, in part, that the VA may not in any fiscal year implement certain administrative reorganizations unless the Administrator, not later than the date on which the President submits the budget for that year, submits a report containing a detailed plan and justification for the reorganization—with respect to a reorganization, described in letters dated November 1, 1985, that were submitted to the chairman and ranking minority members of the Committees, involving the transfer of certain functions from the VA's Office of Data Management and Telecommunications to the VA's Department of Veterans' Benefits and requesting a waiver of that waiting period.

The conferees have determined that the information contained in the November 1 letters, together with other information subsequently provided to the Committees, constitutes a sufficiently detailed plan and justification (as that term is proposed to be defined by section 501 of S. 1887, as passed by the Senate on December 2, 1985) for this proposed reorganization and that the reorganization will serve to improve the operations of the VA's service and benefits delivery system. Since, under the provisions of section 210(b)(2), the reorganization would not be permitted to be implemented prior to the beginning of fiscal year 1987, the conference agreement would waive the required waiting period in order to permit the Administrator to implement this reorganization prior to October 1, 1986.

In agreeing that this statutory waiver be granted, the conferees intend that the Administrator, as part of implementing the reorganization, develop and implement plans for better coordination and integration between the Department of Medicine and Surgery and the Department of Veterans' Benefits in automated data processing modernization, and are not necessarily expressing agreement with the recommendations of the October 25, 1985, report of McManis Associates. The conferees believe that the Administrator should proceed cautiously in adopting recommendations from that report (particularly those relating to procurement). In that regard, the conferees recommend that the Administrator take full cognizance of

the review being conducted by the General Accounting Office, pursuant to a request from the Chairman of the House Veterans' Affairs Committee and the Ranking Minority Member of the Senate Veterans' Affairs Committee, pertaining to certain aspects of the report.

RATIFICATION OF CERTAIN TEMPORARILY-EXPIRED AUTHORITIES

VETERANS' ADMINISTRATION REGIONAL OFFICE IN THE PHILIPPINES

The compromise agreement (section 19024(a)) contains a provision ratifying any action taken by the Administrator during the period beginning on November 1, 1985, and ending on December 3, 1985, in connection with the exercise of the Administrator's authority under section 230(b) of title 38, relating to the establishment of a regional office in the Republic of the Philippines. This authority to operate such an office expired on October 31, 1985, but was extended for three additional years by section 402 of Public Law 99-166.

CONTRACT CARE AUTHORITY IN PUERTO RICO AND THE VIRGIN ISLANDS

The compromise agreement (section 19024(b)) also contains a provision ratifying any action taken by the Administrator of Veterans' Affairs in connection with entering into any contract to provide, during the period beginning on November 1, 1985, and ending on December 3, 1985, care described in subclause (v) of section 601(4)(C) of title 38, United States Code, relating to the Administrator's authority to provide hospital care and medical services in certain noncontiguous "States" (defined in present section 101(20) to include United States Territories and possessions and the Commonwealth of Puerto Rico), including any waiver made by the Administrator of the applicability to the Commonwealth of Puerto Rico or the Virgin Islands of the restrictions described in that subclause for that period. This authority to provide such care and services also expired on October 31, 1985, but was made permanent in the case of the Virgin Islands, and was extended (with certain limitations) for an additional three years in the case of Puerto Rico, by section 102 of Public Law 99-166, enacted on December 3, 1985.

ALCOHOL AND DRUG TREATMENT AND REHABILITATION CONTRACT PROGRAM

The compromise agreement (section 19024(c)) also contains a provision ratifying any action taken by the Administrator of Veterans' Affairs in connection with entering into any contract to provide, during the period beginning November 1, 1985, and ending December 3, 1985, care described in section 620A of title 38, relating to contracts for certain care and treatment and rehabilitative services for eligible veterans suffering from alcohol or drug dependence or abuse disabilities. This authority to provide such care and services also expired on October 31, 1985, but was extended for an additional three years by section 101 of Public Law 99-166.

TITLE XIX—COMMITTEE ON VETERANS' AFFAIRS

Mr. CRANSTON. Mr. President, as the ranking minority member of the Committee on Veterans' Affairs, I would like to explain and discuss the provisions of title XIX of the pending measure, which pertain to Veterans' Administration programs, so as to provide background for my colleagues and others with an interest in the actions of our committee and our counterpart committee in the House to satisfy our reconciliation instructions as set forth

in the First Concurrent Resolution on the Budget for fiscal year 1986, Senate Concurrent Resolution 32.

At the outset, I note the very difficult task that our two committees had in developing this conference agreement. We were working with very complex subject matter, and the differences between the two Houses on some issues were great. However, by virtue of long and hard negotiations between conferees and the staffs of the two committees, we were finally able to reach a compromise which is reflected in the provisions in title XIX of the pending measure.

As with all compromises, the final agreement of the conferees is not completely satisfactory to either side, but I believe that the Senate's positions and concerns were fairly vindicated. I thank my fellow Senate conferees, our Committee Chairman [Mr. MURKOWSKI], and our former Chairman [Mr. SIMPSON]. I congratulate our colleagues in the other body who served as conferees, particularly Representative MONTGOMERY, the House Committee Chairman, Representative HAMMERSCHMIDT, the Committee's Ranking Minority Member, and Representative EDGAR, the Chairman of the Subcommittee on Hospitals and Health Care, for their steadfast dedication to the House position.

Mr. President, at the time the reconciliation legislation was before the Senate last month, I made a detailed statement on the legislation our committee developed to meet our reconciliation instructions. I refer my colleagues and others with an interest in this background information to those remarks which begin on page S15468 of the CONGRESSIONAL RECORD of November 14, 1985.

SUMMARY OF TITLE XIX AND RECONCILIATION SAVINGS

Mr. President, as I noted when the reconciliation legislation was before the Senate in November, our committee's proposed legislation—which was included in title XI of the Senate reconciliation bill, S. 1730—was composed of three parts, one revising VA health-care eligibility criteria, one authorizing the VA to recover from third-party insurers for care provided to veterans with health insurance and with no service-connected disabilities, and the last, placing a cap on the amount of the fiscal year 1986 VA disability compensation COLA. In the conference agreement, subtitle A of the title XIX, entitled "Health Care", contains provisions derived directly from the first two parts, subtitle B, entitled "Compensation Rate Increase," contains a compensation COLA rate increase below the cap we had set, and subtitle C, entitled "Miscellaneous Provisions", contains four additional provisions, two of a technical nature and two derived from provisions in the House-passed reconciliation measure for which the Senate had passed a counterpart provision in another measure, S. 1788.

Briefly, title XIX consists of the following elements:

Subtitle A would revise certain health-care eligibility criteria and establish a requirement for certain non-service-connected disabled veterans to make modest payments for VA care, and provide for recovery from health insurers of certain reasonable costs of VA-furnished care and services for veterans with health insurance coverage and with no service-connected disabilities;

Subtitle B would provide, effective December 1, 1985, for a 3.1-percent cost-of-living increase for fiscal year 1986 in VA disability compensation and DIC rates; and

Subtitle C would (1) require the VA to provide for the conduct of a female Vietnam veteran health-experience study, (2) establish a VA Advisory Committee on Native-American Veterans, (3) waive a waiting period for an administrative reorganization within the VA, and (4) ratify certain temporarily-expired authorities.

More specifically, the three elements which result in cost savings (two in subtitle A and one in subtitle B) fulfilling—indeed, as I have noted, exceeding substantially—our reconciliation instructions would provide as follows:

REVISION OF HEALTH-CARE ELIGIBILITY SUBTITLE A

First, would revise VA health-care eligibility so as to direct—by using the word "shall" in describing access to VA care rather than the word "may" as used in current law—that VA-furnished hospital care be furnished to specified categories of veterans: namely, first, any veteran for a service-connected disability; second, a veteran with a service-connected disability rated at 50 percent or more; third, a veteran with a service-connected disability rated at less than 50 percent (including a veteran discharged for a disability incurred or aggravated in the line of duty or a veteran disabled as a result of VA treatment or vocational rehabilitation); fourth, a veteran who is a former prisoner of war; fifth, Vietnam veterans exposed to certain toxic substances or veterans exposed to radiation from nuclear detonations; sixth, veterans of the Spanish American War, Mexican Border period, or World War I; and seventh a veteran without a service-connected disability who meets a new, first-level income threshold, to be called the "Category A Threshold," by virtue of having annual family income no greater than \$15,000 for a veteran with no dependents, and \$18,000 for a veteran with one dependent, with adjustments of \$1,000 for additional dependents; and would eliminate the existing eligibility of non-service-connected veterans over age 65 without regard to their ability to defray the cost of their care.

Second, would generally maintain the current law authorities to furnish hospital care through contract or free-basis arrangements with non-VA facili-

ties and nursing home and outpatient care, either in VA or non-VA facilities as authorized, to the extent of available resources and facilities, to veterans in the categories mentioned above.

Third, would generally maintain current law authorities to furnish hospital and other forms of care, to the extent of available resources and facilities, to veterans who meet a new, second level income threshold, to be called the "Category B Threshold," by virtue of having annual family incomes no greater than \$20,000 for a veteran with no dependents, and \$25,000 for a veteran with one dependent, with adjustments of \$1,000 for additional dependents, either in VA facilities or, as currently authorized in certain circumstances, through non-VA facilities at VA expense.

Fourth, would authorize the VA to furnish, within otherwise available space and resource capacity, care to veterans without service-connected disabilities and whose annual family incomes exceed the category B threshold who agree to make certain payments—approximating payments made under Medicare—in connection with their care.

The Congressional Budget Office estimates that the provisions relating to health-care eligibility criteria in this subtitle would generate net reconciliation savings of \$49 million in budget authority [BA] and \$46 million in outlays in fiscal year 1986, \$93 million in BA and \$87 million in outlays in fiscal year 1987, and \$102 million in BA and \$95 million in outlays in fiscal 1988.

THIRD-PARTY REIMBURSEMENT

Subtitle A would also authorize the United States to collect from third-party insurers the reasonable cost of care provided by the VA to non-service-connected-disabled veterans to the extent that the insurer would be liable to pay for the care if it had been furnished by a private facility. These provisions would have the effect of invalidating the so-called "exclusionary clauses" in health insurance contracts, which currently preclude payment for care furnished by Federal facilities, and would make the VA eligible to receive payment from a third party on the same basis and to the same extent that a non-VA health-care facility would be eligible. The VA's right to recover would, therefore, generally be contingent upon the agency's compliance with the terms and conditions of the law, contract, or other arrangement under which the veteran would be eligible for payment by the third party.

CBO estimates that these so-called "third-party" provisions in subtitle A would generate net BA and outlay savings of \$203 million in fiscal year 1986, \$353 million fiscal year 1987, and \$402 million in fiscal year 1988.

VA COMPENSATION COLA

SUBTITLE B

Would provide, effective December 1, 1985, for a VA disability compensa-

tion COLA of 3.1 percent in fiscal year 1986—the same percentage COLA that was provided in fiscal year 1986 for VA pension and Social Security—as compared to 4.1 percent, as assumed in the CBO baseline.

CBO estimates that the provisions in subtitle B would produce savings of \$84 million in BA and \$76 million in outlays in fiscal year 1986, \$102 million in both BA and outlays in fiscal year 1987, and \$104 million in both BA and outlays in fiscal year 1988.

TOTAL THREE-YEAR RECONCILIATION SAVINGS

Altogether, then, CBO estimates that title XIX would produce savings of \$336 million in BA and \$325 million in outlays in fiscal year 1985, or \$548 million in BA and \$542 million in outlays in fiscal year 1987, and \$608 million in BA and \$601 million in outlays for fiscal year 1988, for total 3-year savings of \$1.492 billion in BA and \$1.468 billion in outlays, \$342 million in BA and \$318 million in outlays in excess of our reconciliation instructions to save \$1.15 billion in BA and outlays over those 3 years.

BACKGROUND

Mr. President, I wish to emphasize, as I did during Senate debate on the reconciliation legislation last month, that I concur wholeheartedly that there is an absolutely critical need to restrain Federal spending so as to make major reductions in the deficit. Although I did not support the conference report on the budget resolution—I voted for an alternative that would have made a deeper cut in the deficit—a majority of my colleagues in both Houses did support the conference report.

Under the budget resolution that the Congress adopted, our committee and our counterpart committee in the other body were mandated to act to find ways to achieve a specified level of savings. It is essential, in understanding our two committees' actions, to appreciate that if we had not met our obligations in this regard, the Budget Committees in our respective bodies would have done so. I want to stress that point to my colleagues and to others with an interest in this legislation.

In light of this background, I did my best to work in a cooperative fashion with the seven other members of our two committees who served as conferees on this legislation, and I believe that we succeeded in developing legislation that allows us to satisfy our reconciliation instructions in an appropriate fashion. In fact, as I have indicated already, the legislation that we have developed would save \$342 million more in BA and \$318 million more in outlays than the required amounts over the next three fiscal years, and \$176 million in BA and \$171 million more than in either version of the legislation. Those added savings are due to the lower than anticipated inflation rate reflected in the Consumer Price Index increase as calculated for purposes of the Social Security cost-of-

living adjustment [COLA] and applied in this measure to the VA compensation COLA.

I want to stress, however, that this compromise, as did the Senate measure, would achieve the mandated savings without requiring reductions in VA programs.

Specifically, in fiscal year 1986, \$227 million in BA and outlay savings would come from added revenues to the Federal Government—a net of \$203 million of which would be from third-party health insurers and a net of \$24 million from small copayments from non-service-connected veterans with annual family incomes over the \$20,000/\$25,000 category B threshold in connection with their being furnished VA care. In addition, the CBO estimates that net savings of approximately \$26 million in BA and \$23 million in outlays would be realized as a result of non-service-connected veterans with family incomes above this Category B threshold choosing alternative sources for their health care.

The remainder of the fiscal year 1985 savings—\$84 million in BA and \$76 million in outlays—would come from providing a COLA of 3.1 percent in fiscal year 1986, effective December 1, 1985, in the rates of VA disability compensation paid to service-connected-disabled veterans and disability and indemnity compensation (DIC) paid to the survivors of those who have died from service-connected causes. As I've indicated already, that is the same percentage increase as the Social Security and VA pension COLA.

Thus, I believe that our two Committees have met our fiscal obligations under the Budget Resolution while continuing with our best efforts to keep the VA—and particularly the VA health-care system—strong and vital so that it can continue to meet the needs of those who answered our country's call in its hours of need.

As I noted when the reconciliation measure was before the Senate last month, this is unquestionably the most important piece of veterans' health-care legislation brought before the Congress since at least 1973, and I believe there is a need to touch on a number of aspects of the legislation incorporated in title XIX of the pending measure.

SUBTITLE A: ENTITLEMENTS AND ELIGIBILITIES FOR HEALTH CARE FROM THE VETERANS' ADMINISTRATION

Mr. President, the greatest differences between the approaches of the two Houses was in the area involving eligibility for VA health care. In discussing the final compromise in this area, I would like briefly to discuss the two approaches, why I believed the Senate's approach in this area was the better course, and how the compromise takes my concerns in this regard into account.

SENATE APPROACH

The Senate-passed provisions modified the eligibility status of two categories of veterans and established

some clear, consistent statutory priorities for VA hospital, outpatient, and nursing home care.

The first category of veterans affected by the Senate legislation consisted of those veterans to whom we have always owed the primary obligation—veterans being treated for their service-connected conditions and also those veterans with service-connected disabilities rated at 50 percent or more disabling. Veterans in this latter category have been given special recognition by the Congress since 1976 when they were accorded eligibility for unlimited outpatient care and were given a top priority for receiving that care ahead of all but veterans seeking care for their service-connected disabilities. These two groups of veterans would have been given a comprehensive entitlement to VA care, including both hospital and outpatient care as well as, in some instances, contract services where necessary.

Those veterans in this category needing nursing home care for their service-connected disabilities would also have been entitled to that care at VA expense.

The second category of veterans directly affected by the Senate legislation would have been those non-service-connected veterans age 65 and older who had family incomes over \$25,000 in the preceding calendar year. Veterans in this category would no longer have been automatically eligible for VA care without reference to their ability to pay for that care. Rather, they as well as non-service-connected veterans under the age of 65 with such family incomes, would have still been eligible to receive VA care but would have had to make a modest payment to the VA for it. The eligibility of this latter category of veterans under the Senate legislation would have been expressly conditioned on there being space and resources otherwise available for their care.

For veterans presently eligible for VA care who were in neither of these categories, eligibility for VA care would have remained essentially unchanged; the VA would have been authorized to furnish them with such care to the extent of available VA resources and facilities. However, a new, objective standard of eligibility based on income for non-service-connected veterans would have been established.

In connection with the veterans' health care generally, the amount of health care that can be furnished by the VA is a function of the level of funds appropriated for the purpose by the Congress. All such funds must, under the Budget Act, be made available to be spent for such purposes. Thus, the eligibility of veterans—other than those in the new entitlement categories because of their contract care entitlements as well—for care under the Senate approach would have depended on the outcome of the appropriations process, an area where those

of us with a strong interest in the VA health-care system have enjoyed considerable success in the past.

In fact, during my 17 years in the Senate, during which time I have been either the chairman—for 12 years—or the ranking minority member, for the last five—of the subcommittee or full committee with jurisdiction over the VA health-care system, I have been deeply involved in an ongoing effort to equip the VA to provide first-quality, modern medical care to veterans. Over that period, we have, through the appropriations process, added 66,000 health-care workers to the VA system. Although the vast bulk of that increase occurred in the 1970's, we have continued with our efforts in support of the system. Just this October, Chairman MURKOWSKI and I, in connection with the VA's fiscal year 1986 appropriation, managed to restore \$100 million to the medical care account. However, in this time of budget deficits it is very difficult to predict the future success of such efforts.

Thus, the Senate measure provided generally for a three-level approach—entitlement for care for the principal beneficiaries of the VA system, maintenance of current eligibility generally for all other veterans presently eligible for VA care except those non-service-connected veterans with family income above \$25,000 for the preceding calendar year, and eligibility for care for those in that last group if space and resources are otherwise available and certain payments are made by the veteran. I believe that this struck an appropriate balance and represented, in the last analysis, a promise we in the Congress could reasonably strive to realize in the current time of fiscal restraint.

Together with the statutory priorities proposed in the Senate measure—with the first priority being accorded to service-connected veterans receiving care for their service-connected conditions—that approach should have ensured that the VA health-care system would continue, in its present configuration, to meet its principal mission of providing needed health care to service-connected veterans and other veterans made eligible for such care.

HOUSE APPROACH

In contrast, the approach taken in the House bill did not seem reasonable to me. The apparent purpose of the House approach was to create an entitlement to hospital and outpatient care for all veterans presently eligible for VA care except for non-service-connected veterans whose family incomes in the 12 months immediately preceding their application for care are more than 3½ times the VA pension income standard.

I believe that this approach was flawed in several fundamental ways. First, it appeared to promise an entitlement to VA health care, without limit, for all but one category of veterans—that is, non-service-connected

veterans with incomes above certain levels—for example, incomes over \$19,659 in the case of veterans with no dependents and family incomes over \$25,751 in the cases of those with one dependent, with \$3,233 more added for each additional dependent. Thus, a married non-service-connected veteran with two children would, under the House bill, have been accorded VA health-care entitlement based on inability to defray the cost of care if his income was not greater than \$32,217.

The House Committee has described the effect and intent of its bill in conflicting ways. For example, the committee chairman, Representative MONTGOMERY, issued, as committee chairman, a press release, dated September 30, 1985, which states in part:

By approving the health care provisions of the House bill, the committee assured service-connected and needy veterans for the first time that, if they need health care from the VA, it will be provided. Period.

Also, the House Committee report (H. Rept. 99-300, 99th Cong. 1st Sess. 773) contained the following statement:

Under existing law, as well as under the administration's proposal, an eligible veteran is unable to predict whether care will be available when needed. This uncertainty arises by virtue of the fact that under current law and under the Administrator's proposed means test the Administrator "may" provide care "within the limits of Veterans' Administration facilities." There is no requirement that the Administrator do so. In contrast, the Committee bill would require VA to provide health care to several categories of veterans.

In contrast, the committee report contained this statement of caution and limitation about the effect and content of the House bill:

The bill would require the Department of Medicine and Surgery of the VA to plan to care for all eligible veterans under a new section 610 of title 38, United States Code. The care would be provided in the VA facility where the veteran applied for admission, or another VA medical facility within a reasonable distance.

But, this language was nowhere brought out in the House debate during consideration of the reconciliation legislation. (CONGRESSIONAL RECORD, October 23, 1985, H9028-H9029.)

So, most veterans would clearly have been led to believe by press reports and other information they received that they were being guaranteed VA care by the House legislation.

In contrast, I do not believe that we in Congress can today, in good conscience, purport to be guaranteeing the VA's ability to furnish inpatient and outpatient care to all those to whom the House bill would have seemed to extend entitlement to care. And, it seems even more clear that the VA will be unable to furnish the

amounts of hospital care—let alone outpatient care which is oversubscribed now—seemingly promised by the House bill in either the near- or long-term future if any of the projections prove true regarding the anticipated increase in demand for VA care that will come in the 1990's from the growing population of older veterans.

The ability of the VA system to provide care is, as I noted a moment ago, a function of the level of appropriations made for VA medical care. The House proposal, by its terms, could not control the outcome of the appropriations process. Its purpose would seem to have been to influence that process.

I believe, however, that it would be very unwise for Congress to suggest to all of the veterans to whom the House bill would seem to have extended entitlement that, as a result of the House-proposed legislation alone, the VA health care system would be there for them, now and in the future, whenever they may seek care. Without providing the funds—both to operate the current system with such additional staff and resources as might be needed and to repair, renovate, and modernize existing facilities, as well as to construct new facilities in those areas of the country with the greatest potential for new demand—such a result cannot be guaranteed.

I also believe the House approach was flawed to the degree that it was based on a belief that substantial increases in funding for the VA system will be forthcoming in the near future. In this time of skyrocketing Federal deficits and harsh budget realities, made more intense by the Gramm-Rudman deficit reduction legislation that was enacted last week, we will have to do everything in our collective power in our two Committees just to hold onto the present VA system—just to maintain its current capacities. We cannot realistically be suggesting to America's veterans that there is room for the creation of broad new entitlements for care in a system that will almost certainly be faced with reductions in the next few years and which may well be forced by the deficit reduction process now in law to reduce its personnel by more than 5 percent over the next 3 years and possibly much more thereafter.

Another factor which highlights the flawed nature of the House approach is the lack of any merchandise in the House legislation or under current law—such as review in court—by which a veteran might seek to enforce his or her new entitlement to care. In light of the bar in section 211(a) of title 38 to court review of claims for VA benefits—a bar I am certain would apply in the case of a veteran contesting a denial of health care—the "promise" of the House approach would be unenforceable and, for the veteran denied care, empty. In this regard, it is ironic to note that the purported establishment of this

"right" without "remedy" was quite deliberate. The Senate has four times passed judicial review legislation to remove this section 211(a) bar, S. 367 on July 30, 1985, S. 636 on June 15, 1983, S. 359 on September 14, 1982, and S. 330, on September 17, 1979. In the case of the first three bills the other body refused to take up that legislation just as it has with respect to S. 367 for this first session of the 99th Congress up to this point.

Mr. President, although the compromise agreement follows in many respects the House approach in the area of entitlement and eligibility for care, it was modified in a number of important ways in response to the concerns I have just outlined.

CONFERENCE APPROACH ON HEALTH CARE ELIGIBILITY

First, and most importantly, although the word "shall," rather than "may" as in current law, is used in describing the eligibility for hospital care of various categories of veterans—largely derived from the House bill—the meaning of that change in eligibility is spelled out specifically, definitively, and unambiguously by both committees in the joint explanatory statement accompanying the conference report.

In that statement, the conferees have set forth their intention regarding those veterans as to whom the Administrator "shall furnish" hospital care—any veterans for a service-connected disability; a veteran with a service-connected disability rated at 50 percent or more; a veteran with a service-connected disability rated at less than 50 percent—including a veteran discharged for a disability incurred or aggravated in the line of duty and a veteran disabled as a result of VA treatment or vocational rehabilitation; a veteran who is a former prisoner of war; Vietnam veterans exposed to certain toxic substances or veterans exposed to radiation from nuclear detonations; veterans of the Spanish American War, Mexican border period, or World War I; and veterans who are Medicaid-eligible or in receipt of chapter 15 improved VA pension and those whose family incomes are no greater than the new, first level income threshold, the \$15 to \$18,000 category A threshold.

As to those veterans, the conferees have stated definitively and emphatically that "the VA's sole obligation," is such a veteran is in immediate need of hospitalization, is "to furnish an appropriate bed at the VA facility where the veteran applies for care" or, if no bed is available at that VA facility, "to furnish a contract bed—as authorized under current law as recodified in new section 603—or to arrange to admit the veteran to the nearest VA medical center [VAMC], or Department of Defense facility with which the VA has a sharing agreement, with an available bed." If the veteran in one of these shall furnish categories who is seeking care is not in need of immediate hospitalization, the VA's obligation would be either to "schedule the veteran for admission where the veteran applied, if the schedule there permits," or if it does not, to "refer the veteran to the nearest VA facility, or DOD facility with which the VA has a sharing agreement, with an available bed and to facilitate the veteran's admission."

Thus, Mr. President, the apparent promise of the House bill of an unlimited entitlement to both hospital and outpatient care for a wide range of categories of veterans, including those with no service-connected disabilities and with incomes of up to more than \$25,000 for a veteran with one dependent—a promise which, as I indicated earlier, I do not believe can be kept—has been recast into a far more achievable pledge with respect to hospital care only.

ENTITLEMENT OF VETERANS MEETING CATEGORY A INCOME THRESHOLD

The other major changes that have been made to the House proposal in this area to make it more workable are, first, a lowering of the income levels for those nonservice-connected veterans who would be given this form of entitlement to care—from levels of approximately \$20,000 for a veteran with no dependents and \$25,000 for a veteran with one dependent in the House bill, to levels of \$15,000 and \$18,000, respectively, with \$1,000 for each dependent; and second, limiting this new form of entitlement to hospital care only, rather than to hospital and outpatient care as was provided in the House bill. This latter change was necessary because it is already clear, in many areas of the country, that the VA is unable to meet the existing demand for outpatient care. There is simply no basis for suggesting that there will be resources available to the VA to furnish outpatient care to the categories of veterans that the House sought to entitle to such outpatient care.

VETERANS AGE 65 AND OLDER

As in both the Senate and House bills, the conference agreement would provide for a change in the eligibility for VA care of nonservice-connected-disabled veterans age 65 and older who have family incomes over a certain level. Under the compromise agreement, these veterans with annual incomes—for the preceding calendar year, as in the Senate bill—of over \$20,000 for veterans with no dependents, and over \$25,000 of family income for those with one dependent, would no longer be automatically eligible for VA care without reference to their incomes. Rather, they, along with nonservice-connected-disabled veterans under age 65 with incomes over these level, would be required to make a modest payment to the VA—in an amount generally comparable to a corresponding deductible or copayment requirement under Medicare—in order to receive VA care. As was provided for in the Senate bill, the eligibility of these veterans with incomes above this

new category B income threshold would be expressly conditioned on there being space and resources otherwise available at the VA facility where they seek care.

Another provision relating to these veterans age 65 and over which was included in the Senate bill would have established a priority for care for veterans in this age group with incomes above the \$20,000 to \$25,000 level ahead of veterans below that age with such incomes. Unfortunately, our House colleagues would not accept that provision and it is not included in the final agreement.

INTERMEDIATE CATEGORY OF ELIGIBILITY

The conference agreement would establish a third, intermediate category of veterans eligible for VA care in addition to the two categories that I have already described—those two being veterans with incomes no greater than the category A threshold who would be entitled to VA hospital care, and veterans with incomes above the category B threshold who would be eligible for VA care upon agreeing to make a payment to the VA in connection with their care. This new, third category would consist of those veterans with annual incomes at or above the category A, but not greater than the category B, thresholds—for a single veteran, an income above \$15,000 but no greater than \$20,000 and, for a veteran with one dependent, an annual family income above \$18,000 but no greater than \$25,000, with \$1,000 added for each additional dependent. The Administrator would be authorized to provide care to these veterans within available VA resources and facilities. These veterans would make no payments in connection with their care.

DETERMINING INCOME UNDER NEW THRESHOLDS

In determining a veteran's income for the purposes of eligibility under the two new income eligibility criteria thresholds—category A and category B—the Administrator would be required to determine a veteran's annual income—taking into account family income and other assets—generally using the same methods and criteria used to determine annual income for the purposes of VA chapter 15 improved pension eligibility. This income eligibility determination would be made upon a veteran's first application for care each year on a form including income questions similar to those used for determining VA pension eligibility and would be based on the veteran's family income for the calendar year immediately preceding the application for care. Such a determination would then be applicable for the balance of the calendar year.

As I noted a moment ago, if a veteran were eligible for care only by virtue of agreeing to make a payment to the VA in connection with the needed care, the payment required would be in an amount generally comparable to a corresponding deductible for hospitalization.

tal care—\$492 beginning in 1986—or copayment requirement for outpatient care—20 percent—under Medicare. However, the payments required under the conference agreement would be substantially less than the required payments under Medicare for episodes of inpatient hospital care beyond 60 days.

Under the conference agreement, the payment schedule would be as follows:

HOSPITAL CARE

During any 365-day period; first, for the first 90 days of care—for part thereof—the lesser of the cost of furnishing the care or the amount of the inpatient Medicare deductible in effect at the beginning of the 365-day period; and second, for each succeeding 90 days of care—or part thereof—the lesser of the cost of furnishing the care or one-half of the amount of that inpatient Medicare deductible.

NURSING HOME CARE

During any 365-day for each 90 days of care, the lesser of the cost of furnishing the care or the amount of the inpatient Medicare deductible.

OUTPATIENT TREATMENT

For each outpatient or home health visit, the amount equal to 20 percent of the estimated average cost of an outpatient visit to a VA facility during the fiscal year in which the treatment is furnished, but not to exceed during any 90-day period the amount of the inpatient Medicare deductible in effect at the beginning of that period.

COMBINATION OF HOSPITAL AND NURSING HOME CARE

In the case of a veteran who pays the inpatient-Medicare-deductible amount in connection with VA-furnished hospital or nursing home care and who, before using 90 days of the initial mode of care—hospital or nursing home—within a 365-day period, is furnished the other mode of care, the veteran would not be required to make any payment for the second mode until either: first, the number of days of hospital and nursing home care combined exceed 90; or second, the beginning of the next 365-day period, whichever occurs first. If the veteran pays an amount equal to one-half of the inpatient-Medicare-deductible amount in connection with receiving hospital care—as when the veteran is receiving more than 90 days of hospital care in a 365-day period—and, before using the 90 days of hospital care for which that payment was made within the applicable 365-day period, receives VA-furnished nursing home care, the veteran would be required to pay one-half of the deductible amount in connection with the number of days of nursing home care that, when added to the hospital days, do not exceed 90 within that 365-day period.

PAYMENTS FOR COMBINATIONS OF OUTPATIENT TREATMENT AND HOSPITAL AND NURSING HOME CARE

A veteran would not be required to pay an amount greater than the inpa-

tient Medicare deductible in connection with any combination of outpatient and inpatient care furnished during any 90-day period.

TWO SENATE PROPOSALS NOT IN CONFERENCE AGREEMENT

Mr. President, although I am generally satisfied with the conference agreement that we worked out with the House conferees as it relates to health-care eligibility and entitlement, there were two proposed changes in the law from the Senate bill as to which I regret we were unable to gain the House conferees' agreement.

CERTAIN SERVICE-CONNECTED OUTPATIENT AND CONTRACT-CARE ENTITLEMENTS

The first of these provisions would have established a clear, comprehensive entitlement to outpatient, as well as hospital, care for veterans for their service-connected disabilities rated at 50 percent or greater and entitlement to contract outpatient care for both categories and to contract hospital care to veterans for their service-connected disabilities. I have long believed that these categories of veterans are and should be the principal beneficiaries of the VA health-care system and, as such, deserve the entitlement to care and the statutory priority for receiving that care that the Senate bill would have provided.

As I noted, however—and I must confess my surprise at this result, even though the House bill would have achieved the same result for these two categories of veterans in terms of direct VA care—we were unable to secure the support of the House conferees for this result. As a consequence, these two categories of veterans are included along with the other categories of veterans as being given the form of limited entitlement that I described as being in the conference agreement.

SPECIAL OBLIGATION TO VETERANS WITH 50 PERCENT OR MORE SERVICE-CONNECTED DISABILITIES

Nevertheless, I am pleased to note that the conference agreement does contain provisions I strongly urged to emphasize our special obligation to those veterans with service-connected disabilities rated at 50 percent or more. Specifically, these veterans are included expressly in a separate category for the entitlement to hospital care in revised section 610(a)(1)(D) of title 38—the first time that they have been given this separate recognition in the context of hospital care—and are accorded outpatient care eligibility in the provision, revised 612(a), together with veterans being treated for their service-connected conditions rather than in section 612(f), as in current law, with veterans receiving care for their non-service-connected disabilities. Their placement in section 612(a) will provide these 50 percent or more disabled veterans with eligibility for structural alterations to their residences, in connection with the provision of home health services where necessary to enable the veteran to live

at home, costing up to \$2,500 as opposed to the \$600 limit applied to non-service-connected veterans generally under current section 612(f) and revised section 612(f)(2).

It is my strong hope that the heightened recognition being accorded to this category of veterans in the conference agreement will be reflected in VA practices and procedures, including establishing in VA regulations a priority—which current regulations, 38 CFR 17.49, do not contain—for these veterans when they seek hospital care.

STATUTORY PRIORITIES FOR CARE

The second issue as to which I regret the outcome in the conference agreement involves the establishment of statutory priorities for VA care. The Senate bill would have added a new section 612C to title 38, United States Code, to require the Administrator to establish statutory priorities for furnishing hospital, domiciliary, and nursing home care as well as, under current law in section 612(i), medical services. The Senate bill would also have required the Administrator to prescribe regulations to ensure the provision of care and services in that priority order.

Except in cases of a medical emergency, the priorities for hospital, domiciliary, and outpatient care would have been set forth, with the first two categories being as they currently are for outpatient care: First, veterans who require treatment for service-connected disabilities and, second, veterans with service-connected disabilities rated at 50 percent or more.

Establishing these priorities as proposed in the Senate bill would have constituted an expression of congressional policy as to which veterans should receive care in situations in which there may be a scarcity of resources, situations that may well be occurring with increasing frequency beginning by the end of the decade. Unfortunately, the only change to current law that the House conferees were willing to accept involved accepting my proposal to add one additional category of veterans—those in receipt of improved VA pension under section 521 of title 38—to the existing priority listing for outpatient care in section 612(i) of title 38.

Although this is far less than I wanted or believed appropriate in terms of statutory priorities for care, it is an important result in ensuring that truly needy war-time veterans in receipt of VA pension—those, for example, with incomes of no more than \$5,885 for a veteran with no dependents and with family incomes of \$7,700 for a veteran with one dependent—will be given a priority for outpatient care ahead of other nonservice-connected veterans with higher incomes. With further reference to veterans in receipt of pension, I note that they, as well as veterans in receipt of Medicaid, would be automatically placed in category A in terms of their eligibility for

VA care and need not complete any separate income form to establish this eligibility.

CONTRAST WITH THE ADMINISTRATION-
PROPOSED LEGISLATION

Mr. President, the conferees' final agreement regarding health-care eligibility issues can perhaps be best understood in contrast to the legislation that the Administration first proposed in connection with the fiscal year 1986 budget and submitted formally in late April.

That proposal involved an \$11,400 income cutoff for a single veteran and generally provided no opportunity for such a veteran above that income level to become eligible for VA care except by spending down major portions of his or her income above the cutoff line and then, each time—I repeat, each time—VA health care was sought, demonstrating to the VA that such expenditures had in fact been made. That approach could well have resulted in the VA turning away sick veterans who actually would have been unable to afford the care they needed and who would be cared for by the VA under current law.

The effect of that proposal would have been that each nonservice-connected veteran seeking care on the basis of being unable to defray the cost of care would have been required to establish and then reestablish income eligibility each time he or she applied for care. Indeed, the House bill would have required similarly that veterans reestablish eligibility each time they applied for care. The Administration's proposal would have been both individually demeaning and extraordinarily burdensome for the veteran seeking to qualify for eligibility on the basis of income—including many very elderly veterans—and administratively costly and difficult for the VA.

That is why I announced this past spring when the Administration plan first surfaced that I categorically rejected that kind of administratively complicated and burdensome and generally debasing approach, and I am pleased to say that the legislation developed by the conferees bears no resemblance to that Administration proposal.

The approach we are proposing in the conference agreement thus must be viewed against the backdrop of knowing that the Administration has existing authority to establish a means test and that, should Congress take no action, the VA would certainly do so along the lines of the totally unacceptable proposal that the VA had previously made.

TECHNICAL MATTERS

Finally, as I did when this legislation was before the Senate last month, I want to touch briefly on some technical matters regarding the changes relating the VA health-care eligibility proposed in this subtitle.

CONTRACT-CARE ELIGIBILITY

The first such point to a proposed change in the wording of the title 38

sections setting forth eligibility criteria with respect to hospital care, nursing home care, and outpatient treatment. Those sections currently provide eligibility for care "within the limits of Veterans' Administration facilities," which is defined to include both the VA's own facilities and certain other Government facilities as well as private facilities with which the VA may contract for hospital and outpatient care in the circumstances specified in current section 601(4)(C) of title 38. The contract authority for nursing home care is in section 620.

The Senate bill would have replaced the phrase "within the limits of Veterans' Administration facilities" with the phrase "through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603 of this title" and would have reenacted the contract-care eligibility in a new section 603, taking it out of its current-law location as part of the definition—quite anomalously—of "Veterans' Administration facilities" in present section 601(4)(C), thus providing a more direct reference to the VA's contract authority. The conference agreement generally incorporates this approach with a redrafting and relocation—for example, to sections 610(a)(3), 612(a)(3), and 612(f)(3)—of the reference. The use of the new terminology—and the shifting to a new section 603 of the provisions in current law section 601(4)(C) specifying the circumstances under which contract care may be furnished—are not intended to change the effect of current law but rather to achieve greater clarity on the face of the statute regarding the extent of eligibility for contract care—often referred to as fee-basis care.

This new drafting formulation is also intended to make clear—as is the drafting, in revised section 610(a)(3) relating to nursing home care, by the use of the phrase "or as provided in section 620 of this title"—that the extent to which any fee-basis authority is provided is determined solely by what is in section 603, or section 620 as to nursing home, in conjunction with other provisions of chapter 17, and that the Administrator's general authority to contract under current section 213 is not available with respect to any of these chapter 17 health-care authorities. As was pointed out in our committee's report language (S. Rept. No. 99-146, 99th Cong., 1st Sess. 591-92), the committee construes the words "within the limits" used in current law as providing the same limitation as to the nonavailability of section 213, but believes that the new formulation is more definitive and clearer in this regard.

EMERGENCY CARE

A second technical point that I want to note regarding the provisions relating to revisions in VA health-care eligibility involves the relationship between the new requirement that some

veterans have to agree to make payments in connection with their care, on the one hand, and the VA's existing authority to provide care in emergency situations, on the other. Although a veteran with annual family income above the category B income threshold would generally be eligible for care or services only upon the veteran—or someone authorized to act for him or her—agreeing to pay for those services before they are provided, the VA has full authority under current section 611(b) to furnish hospital care or medical services in emergency cases and to charge the veteran for the approximate amount of the VA's costs for furnishing such care. This emergency authority would be applicable in the case of a veteran in this new category of eligibility who for any reason is unable to execute such an agreement prior to the commencement of care, thereby permitting the VA to furnish whatever care is necessary in an emergency situation and thereafter, as appropriate, to charge the veteran for such care in accordance with the new payment amounts specified in the law to be paid in connection with being furnished VA care.

RECOVERY OF THE COST OF CERTAIN HEALTH
CARE AND SERVICES FURNISHED BY THE VA

Mr. President, turning to the second major element in subtitle A of the legislation in title XIX—the section which would provide for the VA to recover from third-party health insurers for the cost of care provided to insured non-service-connected disabled veterans—these provisions generally follow the Senate approach. As I noted in my remarks last month, my position on such legislation has been clear for many years, dating back to 1979. I believe that such legislation does not make any sense from the standpoint of sound public policy.

It is clear beyond any question that the enactment of this legislation will not reduce the overall cost of VA health care; in fact, the opposite is true because this legislation would have an inflationary impact. This is so both because each unit of health care provided by the VA for which third-party recovery is sought would now have two additional administrative components attached—each paid for by taxpayers ultimately, and because the third parties' costs of processing and responding to the claims would be passed on to those who pay health-insurance premiums as well as taxes.

It is also clear to me that the legislation constitutes a totally unwarranted Federal Government intrusion into private contractual relationships by rewriting some of the most basic terms and conditions of marketplace commercial insurance agreements.

In this regard, I refer my colleagues and others with an interest in this legislation to the excerpts I read into the RECORD last month from a letter written by Bernard Treanowski, the president of the Blue Cross and Blue

Shield Association, in response to a Washington Post editorial on VA third-party reimbursement legislation. As I noted then, this letter—the excerpts of which begin on page S15471 of the RECORD for November 14—is about as succinct an analysis as I've ever seen of the problems with such legislation.

Mr. President, the point that I believe is so well founded that is raised against this legislation—that it violates fundamental principles of insurance—could not be made more clear than by reading revised section 629(a)(3)(A) of title 38 in the conference agreement. This provision would permit the VA to collect under an insurance contract even where the policy is expressly contingent on the insured having satisfied a deductible or paid a copayment and the insured veteran has not satisfied those requirements. Plainly and simply, this provision proposes to rewrite insurance contracts to give the VA a right to collect in situations in which other health-care entities could not. Equally as clearly, without this provision, this third-party reimbursement legislation would not work at all as to most health insurance plans.

But the savings estimate attached to this legislation and the opportunity to point a finger at someone else, the health insurance companies, and say that they are not bearing their fair share of costs made this approach irresistible. On this latter score, as I have pointed out repeatedly, no one has been able to demonstrate to my satisfaction that insurance companies have received any windfall from the exclusionary clauses. Rather, these clauses reflect standard, sound insurance theory and practice.

However, our two committees were faced with very significant reconciliation instructions, and our being credited by CBO for savings, through third-party recoveries, of \$960 million over 3 years—a hopelessly optimistic projection, I might add—through the enactment of such legislation made this an option our committee “simply could not refuse.”

In view of the inevitability of the enactment of some kind of legislation in this area, I did my best to attempt to help craft it in such a way as to make it as workable and as fair as possible. In this effort, I consulted closely with the VA, representatives of various third-party insurers, and others with an interest in the legislation.

I would like to highlight two very significant points that are appropriately addressed in the conference agreement.

VA COMPLIANCE WITH CONTRACT TERMS

First, the language providing for the right of recovery of the cost of care to the extent that the veteran or a non-Federal provider would be eligible to receive payment generally leaves the Federal Government's right to recover contingent upon compliance with the terms and conditions of the law, con-

tract, or other arrangement under which the veteran would be eligible for payment by the third party. Only where the proposed legislation specifically overrides such terms or conditions—the provision in the legislation nullifying preclusions of liability for VA care and the provision I have just cited providing for recovery despite a deductible or copayment not being met—would such requirements be voided. Thus, contract requirements conditioning the third-party's liability—such as for pre-hospitalization screening for second opinions prior to surgery or other specified utilization review procedures—would apply. Likewise, provisions imposing general limitations on the third party's liability—such as contract clauses placing specific dollar limits on payments for certain procedures, limiting a carrier's liability to a percentage of certain charges, or, as in the case of health maintenance organizations, limiting coverage to care provided in specific facilities—would apply. Our committee report language—as printed on pages 577 and 578 and pages 627 and 628 of Senate Report No. 99-146—makes these points clear.

DEPOSITING COLLECTIONS IN MISCELLANEOUS RECEIPTS

Second, VA health care appropriations are not to be reduced in anticipation of collections. Rather, revenues received will be remitted directly to the Treasury to reduce the deficit. Without this provision, which was not contained in prior administration's legislative proposals, I could and would have never agreed to this legislation since deposit of the collected revenues in the VA medical care account would lead to reductions in that appropriation being made up front based on anticipated revenues. The effect of this approach would be to hold the system hostage for a result it could in no way guarantee—that insurers would agree to these payments and that the payments would be forthcoming at certain levels, both fairly readily and expeditiously. Indeed, there continues to be significant question in my mind as to whether any appreciable revenue will be produced by these third-party provisions for several years after enactment, if even that early.

SUBTITLE B—DISABILITY COMPENSATION COST-OF-LIVING ADJUSTMENTS

Mr. President, I also want to make mention of the provisions in the pending conference agreement, which are derived from S. 1887, the proposed “Veterans' Compensation and Benefits Improvements Act of 1985,” which the Senate passed on December 2, 1985. These provisions include a 3.1-percent increase in the rates of disability compensation paid to service-connected disabled veterans and the rates of DIC paid to the survivors of those who have died from service-connected causes.

The VA's service-connected Disability Compensation Program is at the very heart of our Nation's system of

veterans' benefits. The priority that is attached to the needs of service-connected disabled veterans and the survivors of those who have made the ultimate sacrifice is well known and well established. The more than 2.2 million veterans who suffer from disabilities resulting from their service and the 342,000 survivors of those who died from service-connected disabilities are and will remain our committee's No. 1 priority. They are certainly mine.

Thus, Mr. President, I'm delighted that the conference agreement would provide for a compensation and DIC COLA equal to the increase being made this year in Social Security and VA pension benefits—3.1 percent. Consistent with the precedent we established last year in the VA compensation COLA bill, Public Law 98-543, as well as in the reconciliation bill, Public Law 98-369, this increase would be effective on December 1, 1985, the same date as the indexed COLA's for Social Security and VA pension. As our committee has noted many times in the past and throughout this year, we continue to be committed to maintaining this approach.

I also note that, by virtue of section 156(e)(1)(A) of Public Law 97-377, a fiscal year 1983 continuing appropriations measure enacted on December 21, 1982, the enactment of this COLA would automatically result in a 3.1-percent increase, effective on December 1, in survivors' reinstated, Social Security-like benefits paid under section 156 of Public Law 97-377 to certain surviving spouses with minor children.

LAST YEAR'S COMPENSATION COLA SHORTFALL

Mr. President, the House proposed this year that we proceed with a 3.4-percent COLA, splitting the difference between the 3.7-percent increase passed by the House and the Senate's 3.1-percent increase. The Senate insisted on the 3.1-percent increase.

It should be noted, Mr. President, that it is true that last year we did not, regrettably, increase compensation rates by exactly the same percentage as the Social Security COLA. The Social Security COLA turned out to be 3.5 percent and the compensation COLA we enacted before we knew the CPI amount was 3.2 percent.

However, at that time we moved forward by 4 months the effective date of the COLA—from April 1, 1985, to December 1, 1984. This acceleration of the COLA was a major benefit to all compensation/DIC recipients in fiscal year 1985.

In the case of veterans with disabilities rated 10-, 20-, or 30-percent disabling, there was no dollar difference in the monthly rate between a 3.2-percent COLA and a 3.5-percent COLA. However, because the effective date was moved forward by 4 months, these veterans all received more in fiscal year 1985 than they would have otherwise had the date not been moved up. In the case of 30-percent disabled vet-

crans, this meant \$24 more in fiscal year 1985 than if the effective date had been left at April 1 and a 3.5-percent COLA had been enacted.

In the case of veterans rated 40-through 70-percent disabled, the difference between the two COLA percentages was \$1 per month. However, in the case of a veteran rated 60-percent disabled, for example, the earlier effective date meant \$55 more in fiscal 1985 in compensation than would have been paid with a 3.5-percent COLA increase, effective on April 1.

One last example—in the case of veterans rated 100-percent disabled, the dollar difference between the COLA's was \$4 a month. The earlier effective date, however, meant \$140 more in fiscal year 1985 than if a 3.5-percent COLA had been granted effective April 1, 1985.

Thus, Mr. President, in light of the effect of the earlier effective date and in consideration of the great urgency to control Federal spending, I concur in the Senate position that a 3.1-percent COLA is the appropriate adjustment.

If, in future years, there is again a disparity between the amount of the Social Security COLA and the VA compensation COLA we enact before the amount of the Social Security COLA is known, I would certainly carefully and sympathetically consider the need and justification for a restoration of the percentage-point difference to their establishing rate of a subsequent compensation increase.

SUBTITLE C—MISCELLANEOUS PROVISIONS
EPIDEMIOLOGICAL OF FEMALE VIETNAM
VETERANS

Mr. President, section 19021 of the conference agreement contains a provision that would require the Administrator, unless determined not to be scientifically feasible to do so, to provide for the conduct of an epidemiological study of the health of women Vietnam veterans—a so-called "Vietnam-experience" study. This section was derived from a provision in the House bill and from a Senate provision in section 507 of S. 1887, the "Veterans' Compensation and Benefits Improvements Act of 1985." The Senate provision was derived from one that I first introduced in S. 1616, to require a study of any long-term adverse gender-specific health effects in female Vietnam veterans that may result from their exposure to agent orange or to other phenoxy herbicides and to authorize the Administrator to expand the scope of the study to include a so-called "Vietnam-experience" study evaluating any long-term adverse gender-specific health effects in females resulting from any aspect of service in Vietnam.

Mr. President, at the time I introduced S. 1616 and at the time of Senate passage of S. 1887, I discussed the need for such study in detail. I refer my colleagues to my remarks in the CONGRESSIONAL RECORD of September 10, 1985, S11201-04, and of December 2, 1985, S16630-31.

The Centers for Disease Control is currently conducting a large study designed to learn about the health status of Vietnam veterans in general. That study includes three major research components: An agent orange study, a Vietnam-experience study, and a selected cancers study. Although it is expected that a significant level of information regarding health issues for Vietnam veterans in general will result from this effort, the CDC-conducted study will not provide any information about the unique experiences and gender-specific concerns of women Vietnam veterans.

For this reason, since early 1984, I have been urging, along with other members of the Veterans' Affairs Committee, that the executive branch utilize existing authorities to design and undertake an appropriate study of women Vietnam veterans. I am pleased that this provision has been included in the pending legislation, and look forward to having this long-overdue study of the general and specific health status of women Vietnam veterans scientifically reviewed. If not scientifically infeasible to do so, study of health effects that may have resulted from specific factors in service—such as exposure to agent orange or other toxic substances, or traumatic experiences—would also be authorized, although not required by this provision in the conference agreement.

ADVISORY COMMITTEE ON NATIVE-AMERICAN
VETERANS

Mr. President, I also want to make special mention of the provisions of the conference agreement—in section 19032—that would establish within the VA an advisory committee on Native-American veterans. These provisions are derived from the provisions of section 505 of S. 1887 as it was passed by the Senate on December 2 as well as from the provisions of section 1901 of the House bill.

Native Americans have a long and distinguished record of service in the Armed Forces of the United States. Their service and subsequent readjustment, in many cases, has taken place in the context of cultural and economic conditions different from those of many other veterans. Yet no evaluation of the particular needs of native-American veterans has ever been undertaken by the VA.

I believe that the differences between native-American veterans and their nonnative veteran counterparts and the diversity within the native-American veteran population itself merit an in-depth evaluation to identify situations or needs unique to native-American veterans and to assess the effectiveness of VA programs and services designed to meet those needs. This advisory committee will be charged with such an evaluation and with the responsibility of making two reports to the Administrator—on November 1, 1986, and November 1, 1987—on the committee's findings and recommendations. The Administrator,

in turn, would be required to present those reports to the Congress, together with his findings and recommendations for administrative or legislative action.

Mr. President, as the Senator from the State where more native-American veterans reside than in any other State—over 27,100 American Indians reside in California, nearly 17 percent of the total U.S. native-American veteran population—and having initiated the provision in the Senate legislation for the evaluation to be carried out by an advisory committee with native-American veteran representation on it, I pressed for inclusion of this provision in the conference agreement. I look forward to receiving and reviewing with great interest the results of the advisory committee's evaluation.

WAIVER OF WAITING PERIOD FOR ADMINISTRATIVE REORGANIZATION OF CERTAIN VA AUTOMATED DATA PROCESSING ACTIVITIES

Mr. President, section 19033 of the conference agreement contains a provision that would waive, with respect to a particular proposed VA reorganization, the waiting period prescribed by section 210(b)(2) of title 38—which provides, in part, that the VA may not in any fiscal year implement certain administrative reorganizations unless the Administrator, not later than the date on which the President submits the budget for that year, provides a report containing a detailed plan and justification for the reorganization. The particular reorganization involves the transfer of certain functions from the VA's Office of Data Management and Telecommunications to the VA's Department of Veterans' Benefits.

Mr. President, as many Senators may know, on February 1 of this year, the Administrator submitted to the committee letters giving notice of the VA's decision to close down a wide range of VA activities at its 59 DVB regional offices and to consolidate those activities in three processing centers. The Administrator stated that his letters were submitted in accordance with section 210(b)(2).

Mr. President, that proposal and the lack of detail in the February 1 letter raised questions—many of which still remain unanswered—regarding the impact of the consolidation on the furnishing of various types of benefits and services to veterans and their dependents as well as on the employees affected. The opinion was thereafter expressed in both the Senate and the House—by myself and the chairman and ranking minority member of the House Committee on Veterans' Affairs—that the February letter was so lacking in detail as not to constitute a valid section 210(b)(2) "detailed plan and justification." In an undated opinion addressing this issue, the Acting General Counsel of the VA declined to state whether it did or did not.

In order to resolve the question of what specifically constituted a "detailed plan and justification," I intro-

duced on June 27, joined by Senators MATSUNAGA, DeCONCINI, and ROCKFELLER, S. 1397, the proposed "Veterans' Administration Reorganization Act of 1985." This legislation set forth a definition of precisely what type of information a detailed plan and justification for a proposed reorganization must contain under section 210(b)(2). Provisions derived from this measure were incorporated into section 501 of S. 1887 as reported from the committee and were approved by the Senate on December 2.

Thus, Mr. President, despite the fact that those provisions have not yet been enacted into law and the fact that the proposed reorganization involving DVB and ODM&T in no way relates to the poorly conceived and ill-advised proposal to consolidate regional office, I believed it was appropriate and necessary that the proposed DVB and ODM&T reorganization be supported by the kind of detailed plan and justification that section 501 of S. 1887 would expressly require, and I so notified the Administrator in a December 6 letter to him.

It was in that context that I considered and examined the Administrator's letter. So that Members can also have an opportunity to understand this proposal, I ask unanimous consent that the texts of his December 4 letter to me which is identical to the November 1 letter and of my December 6 letter to him, together with the provisions of section 501 of S. 1887, be printed in the RECORD at this point.

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

VETERANS' ADMINISTRATION,
Washington, DC, December 4, 1985.

HON. ALAN CRANSTON,
Ranking Minority Member, Committee on
Veterans' Affairs, U.S. Senate, Wash-
ington, DC.

DEAR SENATOR CRANSTON: The purpose of this letter is to report a planned administrative reorganization within the Veterans Administration (VA) involving the transfer of certain functions from the Office of Data Management and Telecommunications (ODM&T) to the Department of Veterans Benefits (DVB).

As you are aware, under the Congressional "report and wait" requirements of 38 U.S.C. § 210(b)(2), a detailed plan and justification must be submitted to the appropriate committees of Congress for certain VA administrative reorganizations involving a reduction during any fiscal year by 10 percent or more in the number of full time equivalent employees (FTEE) at a VA covered office or facility. The report must be made not later than the date on which the President submits his budget for the next fiscal year. Thereafter, no action can be taken to implement the reorganization until the first day of that fiscal year. This letter is submitted in order to satisfy the above-reporting requirement for a planned VA organizational transfer of certain automated data processing (ADP) functions as described below.

As you are aware, in April 1985, the Veterans Administration selected McManis Associates, Inc., to prepare an implementation plan to modernize the DVB benefits and services delivery systems. This plan was to be consistent with my policy statement

mandating the full modernization of the Agency's data processing and communications systems so as to improve the quality of service provided to veterans and their families. The McManis study among other things found that there was limited end-user involvement in system design and development, limited systems training, and that there were inconsistent system utilization management practices. Based on these findings, I approved the McManis recommendations the DVB should have the authority, resources and responsibility for the systems development and greater operational oversight within overall agency standards and policy guidelines. Implementation of this recommendation requires the administrative reorganization which is the subject of this letter.

We propose to reorganize in order to move ADP program specialists closer to the DVB program specialists, and give DVB a greater role in ADP decisions. By giving DVB control of ADP resources, they will be able to better focus ADP expenditures on service delivery priorities. This reorganization will involve 362 ODM&T full time equivalent employees (FTEE). These organizational transfers will occur at VA Central Office (VACO), and at the Austin, Texas; Hines, Illinois; and Philadelphia, Pennsylvania VA Data Processing Centers (DPC). The number of FTEE transferred as the result of this reorganization and the base 1986 ODM&T FTEE at each facility, are as follows: VACO—81/441; Austin—75/663; Hines—146/406; and Philadelphia—60/197.

The functions performed in the positions to be transferred are unique to the support of DVB programs and, after this transfer to DVB, ODM&T will no longer perform these functions. These functions, and the stations at which they are performed, are as follows: VACO—Benefits Automation Service, which designs all ADP programming for DVB, and some administrative support personnel; Austin DPC—Benefits Delivery System Division, which does programming for DVB in the areas of loan guaranty, the Beneficiary Identification and Records Location Subsystem (BIRLS), and debt collection (beginning in fiscal year 1986); Hines DPC—System Support Divisions, which handle programming for DVB benefits programs, such as Compensation and Pension, Education, and Vocational Rehabilitation, and which prepare the computer tapes for the Department of Treasury to use in issuing benefits checks; and Philadelphia DPC—Systems Division, which does programming for VA applications. There will also be transferred, at each of the above stations, the functions of that part of the system verification and testing element which performs systems quality control for the programming done by the benefits delivery system staff at each of these stations.

It is clear from the foregoing that this reorganization is simply an organizational transfer of employees. These employees will not be relocated to other stations. The great majority of them will experience no change in their functions, personnel status, immediate supervision, or even in the location of their workspace. Accordingly, there will be little or no cost impact as the result of this reorganization.

We believe that this reorganization is appropriate and advisable, and that it will have the desired effect of improving and making more efficient DVB benefits delivery systems by giving DVB direct control over the resources used for its ADP support. This reorganization has already been the subject of DVB briefings with staff of the House and Senate Veterans' Affairs Committees. Of course, we would be pleased to provide any additional information which

you may desire concerning this reorganization.

I request your assistance in introducing, and supporting enactment of, a legislative waiver of the 38 U.S.C. § 210(b)(2) waiting period for this reorganization, so that these improvements in our organizational structure can be made as soon as possible. Suggested language for such a legislative waiver is enclosed. Absent such a waiver, we must wait until fiscal year 1987 to implement this reorganization.

I appreciate your support for our efforts to improve benefits delivery for our Nation's veterans.

Advice has been received from the Office of Management and Budget that there is no objection to the presentation of this letter and legislative proposal from the standpoint of the Administration's program.

Sincerely,

HARRY N. WALTERS,
Administrator.

COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, December 6, 1985.

HON. HARRY N. WALTERS,
Administrator of Veterans' Affairs, Wash-
ington, DC.

DEAR HARRY: Thank you for your letter of November 1 in which you gave notice of a planned administrative reorganization within the VA involving the transfer of the Office of Construction (OC) to the Department of Medicine and Surgery (DM&S) and in which you request a waiver of the waiting period prescribed by section 210(b)(2) of title 38, United States Code.

As you noted, section 210(b)(2) provides, in part, that the VA may not in any fiscal year implement a reorganization involving a more-than-10-percent reduction in the number of full-time equivalent employees at any VA facility with more than 25 employees unless the Administrator, not later than the date on which the President submits the budget for that year, provides "a report containing a detailed plan and justification for the reorganization."

As you may know, in response, in part, to what I believed was an ill-conceived and potentially damaging plan to consolidate various activities of the Department of Veterans' Benefits 59 regional offices into 3 processing centers, I introduced legislation, S. 1397, the proposed "Veterans' Administration Reorganization Act of 1985", on June 27. A principal thrust of that measure was to define for purposes of section 210(b)(2) precisely what a "detailed plan and justification" for a proposed reorganization must entail.

Provisions derived from this legislation were incorporated into the compensation cost-of-living increase bill that was ordered reported by the Committee on October 31 and passed by the Senate, as S. 1887, on December 2. Specifically, section 501 (copy enclosed) of the bill as passed would define the term "detailed plan and justification" to include at a minimum a number of specific items, including—

(1) a specification of the number and responsibilities of the employees to be added to or removed from each affected office;

(2) a description of the changes in functions that would occur at the affected offices;

(3) an explanation of the reasons why it has been determined that the reorganization is appropriate and advisable in terms of the statutory missions and long-term goals of the Veterans' Administration;

(4) a description of the effects that the reorganization may have on the provision of benefits and services to veterans and dependents of veterans (including the provi-

sion of benefits and services through offices and facilities of the VA not directly affected by the reorganization); and

(5) estimates of the implementation cost and the subsequent cost impact of implementing the reorganization.

Although this provision has not yet been enacted, I believe that it likely will be in the near future. In any event, I am not able to support a waiver of the requirement for a waiting period for a section 210(b)-covered reorganization unless the Committee is provided with at least the information that would be required under section 501 of S. 1887 as passed by the Senate. In this regard, I am particularly concerned by your statement, in requesting a waiver in your letter, that "[i]t is uncertain what the organizational change will be on FT&E and costs."

I urge you to provide the Committees with a report containing adequate detail and justification (consistent with section 501 of the Senate-passed bill) in order that we may have all the information necessary to consider meaningfully your request for a waiver of the section 210(b)(1) waiting period.

Finally, with respect to your December 4, 1985, letter reporting a planned reorganization of certain functions from the Office of Data Management and Telecommunications (ODM&T) to the Department of Veterans' Benefits (DVB), I find that letter substantially complete in terms of the information called for by section 501 of S. 1887. There are, however, a few areas that I believe require further clarification under clauses (III), (IV), and (V) of the statutory provision. These items have been called to the attention of Mr. John Vogel, Chief Benefits Director. In order for us to proceed with a legislative waiver for that DVB/ODM&T reorganization, we will need the additional information not later than Wednesday, December 11.

With warm regards,
Cordially,

ALAN CRANSTON
Ranking Minority Member

CLARIFICATION OF REQUIREMENT FOR A DETAILED PLAN AND JUSTIFICATION FOR ADMINISTRATIVE REORGANIZATION

Sec. 501. (a) Subparagraph (C) of section 210 (b)(2) is amended by inserting at the end the following new division:

"(iii) The term 'detailed plan and justification' means, with respect to an administrative reorganization, a written report which, at a minimum—

"(I) specifies the number of employees by which each covered office or facility affected is to be reduced, the responsibilities of those employees, and the means by which the reduction is to be accomplished;

"(II) identifies any existing or planned office or facility at which the number of employees is to be increased and specifies the number and responsibilities of the additional employees at each such office or facility;

"(III) describes the changes in the functions carried out at any existing office or facility and the functions to be assigned to an office or facility not in existence on the date that the plan and justification are submitted pursuant to subparagraph (A) of this paragraph;

"(IV) explains the reasons for the determination that the reorganization is appropriate and advisable in terms of the statutory missions and long-term goals of the Veterans' Administration;

"(V) describes the effects that the reorganization may have on the provision of benefits and services to veterans and dependents of veterans (including the provision of bene-

fits and services through offices and facilities of the Veterans' Administration not directly affected by the reorganization); and

"(VI) provides estimates of the costs of the reorganization and of the cost impact of the reorganization, together with analyses supporting those estimates."

(b)(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall take effect with respect to administrative reorganizations proposed to be carried out in fiscal years beginning after fiscal year 1986.

(2) The amendment made by subsection (a) applies to the administrative reorganization referred to in the letters from the Administrator of Veterans' Affairs to the Committees on Veterans' Affairs of the Senate and the House of Representatives, dated February 1, 1985, relating to the consolidation of certain Veterans' Administration Department of Veterans' Benefits activities from 59 regional offices into three processing centers.

Mr. CRANSTON. Mr. President, the information contained in this letter was subsequently supplemented by information provided by Paul Ising, the VA's Deputy Chief Benefits Director for ADP Systems Management, to the committee's minority staff on December 9. Clarification was received regarding the statement that "[t]he great majority of them (VA employees) will experience no change in their functions, personnel status, immediate supervision, or even in the location of their workspace." In this regard, I was advised that no individual will experience a change in function or in personnel status, six individuals will experience a change in immediate supervision, and one individual will move from the second floor to the third floor within the VA's Central office.

With respect to the reasons for the determination that this reorganization is appropriate and advisable in terms of the statutory missions and long-term goals of the VA, the VA provided the following material extracted from a report prepared by McManis Associates, Inc., which developed and prepared the implementation plan to modernize DVB's service delivery systems;

In our judgment the Veterans' Administration has little choice but to undertake a major DVB modernization program. Without a major overhaul to its total information management capacity, DVB will not be able to continue to provide an acceptable level of service to veterans and their families. Uncoordinated, overlapping data bases complicate data entry and retrieval. Outmoded hardware, software, and telecommunications technologies are expensive and severely limit data access and analysis capabilities. The existing hardware in the regional offices has reached the point where it must be replaced. Over time, there has been such massive modification to the Compensation and Pension software that maintenance of that system is now enormously costly, and the agency is increasingly at risk in trying to maintain it in its present form.

These recommendations were presented and approved in mid-July and provide the framework within which the modernization program will be carried out. Approval of the recommendations established the parameters to guide the implementation effort: a

"modern" architecture should be developed, including appropriate decentralization of DVB systems; and DVB should assume authority and responsibility for its own benefits delivery systems. . . .

We identified two types of organization and management issues which have an impact on the effectiveness and efficiency of DVB service delivery systems. The first type relates to the process by which DVB ADP requirements have been defined and how DVB systems are designed and modified. DVB has had neither direct budget authority nor accountability for its use of ADP resources. It has been dependent upon the Office of Data Management and Telecommunications for all systems development initiatives. End users of the systems have not regularly been involved in the design or acceptance of new applications or modifications to existing applications. There has been no effective mechanism within DVB to establish priorities for systems development or enhancement, nor has there been an effective mechanism to assure ODM&T priorities were consistent with DVB priorities. Without control over the development and support of systems applications, DVB is hampered in its efforts to implement any ADP/telecommunications modernization strategy.

The second set of organizational and management issues identified are internal to DVB. Too rarely have the end users in the field offices been involved in the systems design and development process. New automated systems have been introduced and are utilized in the regional offices with limited user orientation and training. The limited involvement of field personnel in systems development has meant that the effectiveness of the system from the perspective of the veteran or the nontechnical end-user is often limited.

With respect to providing further clarification for the effects that the reorganization may have on the provision of benefits and services to veterans and dependents of veterans—including the provision of benefits and services through offices and facilities of the VA not directly affected by the reorganization—the VA further cited the McManis report as follows:

The aim of the proposed modernization effort is to utilize improved technologies on an economically justifiable basis to remove many of the obstacles to improved efficiency and service. With the changes in processing architecture and telecommunications, a number of significant changes in the way regional offices conduct business can be expected:

1. The veteran will be able to obtain information, resolve problems, and complete processing procedures with fewer stops and by dealing with fewer people.

2. Data related to the same event, procedure, or action will be recorded (entered) once. Data transfer to other systems and organizational elements will be effected electronically without the need to reenter or transcribe the data.

3. Permanent storage of most correspondence and documentation currently maintained manually on a decentralized basis (Claims Files) will be recorded electronically either in image form or as formatted data.

4. All work stations for processing, counseling, testing, and other interactions with the veteran will be supported by multifunction intelligent terminals. Direct concurrent access to the data maintained locally in the RO as well as the very large central data bases located on mainframes will be avail-

able at the workstation. This will mean that individuals will be able to perform a variety of procedures without moving from one piece of specialized computing hardware to another.

In addition, further regarding the relationship of the DVB reorganization to other components of the agency, the VA has advised that the elements of this reorganization are consistent with the three principal strategies of the VA's agencywide ADP modernization programmatic goals, including eventually providing each authorized VA employee with access to all VA data, regardless of its location in VA computer systems.

Finally, with respect to the cost of the reorganization and its cost impact, the VA has clarified that the only cost of the reorganization is the paperwork involved in processing these changes. It is not expected to be significant, but it is not measurable at this time. The VA has indicated that there may be some savings in the future in terms of increased productivity but they are long term and, at this point, unestimated.

After careful analysis of the VA's letter, together with the additional information subsequently provided by the VA, I have concluded that the VA had submitted what constitutes a sufficiently detailed plan and justification for this proposed reorganization and that the reorganization will serve to improve the operations of the VA's service and benefits system. However, since, under the provisions of section 210(b)(2), the reorganization would not be permitted to be implemented prior to the beginning of fiscal year 1987 on October 1, 1986, I have supported and the conference agreement includes a statutory waiver of the required waiting period in order to permit the Administrator to implement this reorganization at the earliest possible opportunity.

Finally, I want to express my appreciation to the VA, particularly John Vogel, Chief Benefits Director, and Paul Ising, the VA's Deputy Chief Benefits Director for ADP Systems Management, for their cooperation and assistance in providing the information necessary for the committees to consider the proposed DVB/ODM&T reorganization and act favorably to permit it to go ahead on an official basis in the near future.

STATUS OF NEGOTIATIONS REGARDING OTHER VETERANS' LEGISLATION

Before concluding my remarks on this measure, Mr. President, I want to comment on the negotiations between the House and Senate Committees on Veterans' Affairs over the numerous differences between our compensation, education, and other VA benefits measures embodied in S. 1887 and H.R. 1408, H.R. 2343, and H.R. 2344. I regret to note that those negotiations have reached an impasse over certain provisions in the Senate bill—now endorsed by the Administration—designed to improve, and enhance the

fiscal stability of, the home-loan guaranty program. As a result of that impasse, it has become clear that further action on the remaining provisions of S. 1887 will not be possible this year.

Mr. President, during the Senate's consideration of S. 1887, I discussed in detail each of these provisions, and my statement on that measure appears at page S16634 of the CONGRESSIONAL RECORD for December 2 (daily edition). At this time, I want to stress my intention to continue to pursue these matters at the earliest appropriate opportunity in the second session of this Congress and my regret at our failure to be able to reach agreement on this package.

Lastly, with respect to the provisions of S. 1887 as it was passed by the Senate on December 2 that deal with the extension and improvement of the Emergency Veterans' Job Training Act of 1983 [EVJTA] I want to make special mention of the agreement that the distinguished chairman of the committee [Mr. MURKOWSKI] and I have reached with respect to these provisions. If we are not able to resolve our differences over the larger legislation early in the next session or to proceed in some other fashion to pass and enact—outside of S. 887—this EVJTA extension and improvement legislation, Senator MURKOWSKI and I have agreed to return the Senate-passed EVJTA extension legislation to the House in a separate bill by early February.

SUMMARY OUTLINE

Mr. President, for the information of my colleagues and the public, I ask unanimous consent that a summary outline of the cost-savings provisions of subtitles A and B of the conference agreement be printed in the RECORD at the conclusion of my remarks.

CONCLUSION

Mr. President, as I noted at the outset of my remarks, reaching a final compromise with our colleagues in the House on some of the issues in this legislation—especially those provisions relating to eligibility for VA health care—was a very difficult task. Together, we had a commitment to fulfilling our reconciliation obligations while protecting the VA as much as possible from harm. However, we had very different approaches as to how to reach that shared goal.

In the end, thanks to the efforts of Senators MURKOWSKI and SIMPSON and Representatives MONTGOMERY and HAMMERSCHMIDT and the other conferees—and many long hours of work by staff of both committees—we were able finally to hammer out the compromise which is before the Senate today and which I recommend to my colleagues.

I want especially to thank the minority staff of the Veterans' Affairs Committee, Bill Brew, Babette Polzer, Ed Scott, Nancy Billica, Ingrid Post, Charlotte Hughes, and Jan Steinberg, for their outstanding efforts on this bill over the last few weeks and

months. My gratitude also to the Senate majority staff, Cathy McTigue, Julie Susman, and Tony Principi, for the extraordinary spirit of cooperation and dedication they exhibited in our work together over this very pressurized and trying time period.

I also thank the House staff who worked on this legislation—Pat Ryan, Jack McDonnell, Vic Raymond, Arnold Moon, Jill Cochran, Mack Fleming, Rufus Wilson, and Kingston Smith from the House Committee on Veterans' Affairs, and also, Bob Cover, of the House legislative counsel's staff who, as usual, worked tirelessly and most effectively in helping to craft the final version of the legislation.

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

SUMMARY OF COST-SAVINGS PROVISIONS FROM SUBTITLES A AND B

HOSPITAL CARE ELIGIBILITY

A. VA shall in VA facilities, and may in non-VA facilities as authorized in section 603, furnish needed hospital care to:

1. Veterans for service-connected disabilities
2. Service-connected disabled veterans rated at 50% or more
3. Other service-connected disabled veterans
4. POWs
5. Veterans exposed to Agent Orange or radiation
6. Veterans of World War I and earlier conflicts

7. Veterans with no service-connected disabilities who are "unable to defray the costs of needed hospital care—meaning those who are either VA improved-pension recipients or Medicaid eligible or who have incomes not exceeding \$15,000 for a veteran with no dependents and \$18,000 for a veteran with one dependent plus \$1,000 for each additional dependent, called the "Category A" income threshold.

In connection with the foregoing, the Joint Explanatory Statement states that:

The conferees intend that care be furnished to service-connected disabled veterans, low-income veterans, and, to the extent resources are available, other eligible veterans.

The conferees intend that for categories 1-8, the VA's sole obligation is (1) if a veteran is in immediate need of hospitalization, to furnish an appropriate bed at the VA facility where the veteran applies or, if none is available there, to furnish a contract bed if authorized in section 603 or arrange to admit the veteran to the next closest VAMC, or DOD facility with which the VA has a sharing agreement, with an available bed, or (2) if the veteran needs non-immediate hospitalization, (A) schedule the veteran for admission there if the schedule there permits, or (B) refer the veteran for scheduling and admission to the next closest VAMC, or DOD facility with which the VA has a sharing agreement, with an available bed and then facilitate the veteran's admission there.

The conferees intend that, if there are two or more veterans applying for the same bed at a particular facility and one is seeking care for a service-connected disability or has a 50-percent-or-more service-connected disability, that veteran should receive the bed.

The conferees note that the legislation makes no change in the beneficiary travel program.

B. VA may, in VA facilities and in non-VA facilities as authorized in section 603, furnish needed hospital care to the extent that facilities and resources are available, to:

1. Non-service-connected veterans with incomes above the Category A income threshold.

2. Non-service-connected veterans with income above \$20,000 for a veteran with no dependents and \$25,000 for a veteran with 1 dependent plus \$1,000 for each additional dependent—called the "Category B" income threshold—on the basis of an agreement to make a payment (similar to the Medicare deductible) in connection with such care.

In connection with the foregoing, the Joint Explanatory Statement states that the conferees intend that those veterans making payments in connection with their care would have lowest priority for inpatient, outpatient, and nursing home care.

C. In the case of a veteran whose income in the previous year is above the Category A income threshold or the Category B income threshold, the Administrator would be authorized to make an exception to place the veteran in a higher-priority category, as appropriate, on the basis of a recent, sharp drop in income to a level substantially below the Category A or B threshold.

OUTPATIENT ELIGIBILITY

Essentially no change in current law; eligibility based on hospital-care eligibility.

NURSING HOME AND DOMICILIARY CARE ELIGIBILITY

No change in current law.

PRIORITIES FOR CARE

No change in current law except to add veterans receiving VA improved pension benefits (under section 512) as a new last priority category (in section 612(i)) for outpatient care.

CONTRACT CARE

No change from eligibility in current law.

INCOME THRESHOLDS

Category A and B as set forth above with the dollar amounts increased, beginning 1/1/87, by the preceding year's Social Security/VA pension CPI.

PAYMENTS BY VETERANS

A. Hospital Care: Payment of the Medicare deductible for the first 90 days of care, and half of the deductible for each succeeding additional 90 days of care, within a 365-day period.

B. Outpatient Care: Per-visit payment of 20% of the VA average daily rate, not to exceed the Medicare deductible for any 90-day period.

C. Nursing Home Care: Payment of the Medicare deductible for each 90 days of care.

D. Combinations of Modes of Care: Payments made for either mode of inpatient care (hospital or nursing home) would be credited toward care in the other mode. Also, a veteran would not be required to pay an amount greater than the inpatient Medicare deductible in connection with any combination of outpatient and hospital or nursing home care furnished during any 90-day period.

COMPENSATION COLA

Provide for a compensation DIC/COLA at 3.1% for FY 1986.

HEALTH-INSURANCE RECOVERY

Provide for VA recovery for health insurers for non-service-connected VA care furnished to covered veterans generally to the same extent as recovery by non-federal providers would be permitted under the health insurance plan in question.

ADOPTION ASSISTANCE AND PRENATAL CARE PROVISIONS

Mr. CRANSTON. Mr. President, I am delighted that the conference committee subconference on Medicaid issues agreed to include, in the reconciliation bill, provisions relating to the adoption assistance program and the coverage of certain groups of low-income pregnant women who have previously been excluded from Medicaid. I proposed these provisions in legislation, S. 1628 and S. 7 respectively, which I introduced earlier in this session.

ADOPTION ASSISTANCE AMENDMENTS

Mr. President, the subconference included in the Finance Committee portions of the reconciliation measure three provisions relating to the adoption assistance program established under Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980.

As one of the principal Senate authors of the 1980 legislation, I have been deeply gratified by the difference that this law has made in the lives of thousands of children who might otherwise have been left to languish in foster care. HHS has reported that by fiscal year 1984 almost 12,000 children had been moved from foster care to adoptive homes under the new adoption assistance program authorized by Public Law 96-272. Experience in operating this new program, however, brought to light several problems of a technical nature with respect to continuing Medicaid coverage for these children as they moved from foster care placements into adoptive homes. Therefore, on September 11, I introduced with the distinguished Senator from Utah [Mr. HATCH] and others, legislation, S. 1628, which would make three changes in the adoption assistance program with respect to the availability of Medicaid assistance for these children. The three changes are: first, elimination of the requirement in existing law that a special-needs child receive a token adoption assistance payment that the State in which a special-needs adopted child resides, rather than the State where the adoption took place, provide Medicaid coverage; and third, clarification that Medicaid coverage can be continued during the care and an adoption decree is actually entered.

Mr. President, as I indicated in my introductory remarks on September 11—CONGRESSIONAL RECORD, S11275—on S. 1628, had the House accepted the Senate bill language in the conference in 1980, the problems relating to continuation of Medicaid between the end of foster care status and the adoption itself would not have occurred nor would the law have required a token adoption assistance payment in order for Medicaid to be available for a special-needs child whose only needs were medical. I am pleased, 5 years later, to have been able to help correct these particular problems.

Additionally, when the 1980 legislation was enacted, I had expressed by

concern that it did not adequately deal with the needs of adoptive families who moved from one State to another. During hearings I chaired on the need for adoption reform legislation during the 95th and 96th Congresses, numerous witnesses testified about the problems that territorial limitations upon then-existing State adoption assistance programs posed for their families. I was delighted when, earlier this year, the Reagan administration supported this change so that we could finally rectify this problem.

Mr. President, as I indicated at the time I introduced S. 1628, the growing, bipartisan support for these adoption initiatives begun more than a decade ago is indeed heartening. Many of those who once opposed Federal legislation to encourage adoptions have now become strong supporters and proponents of our efforts in this area. Even the Reagan administration which in 1981 and 1982 had proposed the repeal of Public Law 96-272, now supports its continuation and has launched its own special needs adoption initiative. Having been a principal author of both Federal statutes relating to adoption, Public Law 96-272 and Public Law 95-266, I welcome this support and new enthusiasm for adoption alternatives. In addition to the Senator from Utah [Mr. HATCH], S. 1628 has been cosponsored by Senators DODD, GRASSLEY, LEVIN, METZENBAUM, MOYNIHAN, RIEGLE, ROCKEFELLER, and HUMPHREY.

EXTENDING MEDICAID COVERAGE TO CERTAIN LOW-INCOME PREGNANT WOMEN

Mr. President, I am also exceedingly grateful to my good friend, the chairman of the Senate Finance Committee, the Senator from Oregon [Mr. PACKWOOD], for the Senate conferees' agreement to accept the House provisions extending Medicaid coverage to low-income pregnant women who are living with an employed spouse, but whose family income is below the AFDC income and assets eligibility standards. The Senator from Oregon and I had discussed these provisions privately when the reconciliation bill was before the Senate and he then assured me that he hoped to be able to include these provisions in the final legislation.

In January, I introduced legislation, S. 7, to close the gap in the Medicaid Program which resulted in these low-income pregnant women in a large number of States being denied the medical assistance necessary to carry their pregnancy to term and increase the likelihood of having a healthy baby. This has been an effort of mine which has gone on over a number of Congresses; each Congress we have made more progress in ensuring that low-income pregnant women are provided with the medical assistance they need during pregnancy. In the last Congress, we succeeded in Public Law 98-369 in extending Medicaid coverage to low-income pregnant women who

have previously been excluded because they had no other dependent children or were living with an unemployed husband. However, provisions which would have extended the same coverage to low-income women living with an employed husband were not enacted. Enactment of the provisions in this reconciliation legislation which would extend Medicaid coverage to this group also corrects an inequity which I consider to be antifamily and antiwork. My statements explaining the history of these provisions, earlier versions of S. 7 which were introduced in the 95th, 96th, 97th, and 98th Congresses, and the cost effectiveness of providing medical assistance during pregnancy to low-income women are set forth in the CONGRESSIONAL RECORD of January 24, at S621 and July 23, 1985, at S9891. My July 23 statement includes the revised CBO cost estimates for enactment of S. 7.

Mr. President, I am very proud to say that S. 7 and my efforts in this area have always enjoyed strong support from a broad range of organizations, including child advocacy groups and health-care groups, as well as organizations with sharply differing positions on the issue of abortion. Those organizations which have endorsed S. 7 include the National Right to Life Committee, Planned Parenthood Federation of America, Children's Defense Fund, National Conference of Catholic Charities, Catholic Health Association, Association for Retarded Citizens, Family Service Association of America, Child Welfare League, National Association of Children's Hospitals and Related Institutions, California Association of Children's Hospitals, National Perinatal Association, and American Academy of Pediatrics.

Mr. President, I also want to express my appreciation to my colleagues from both sides of the aisle and with differing views on the issue of abortion, who have given their support to S. 7 and the principles it represents. Support for S. 7 represents support for an initiative that is prochoice, prolife, and profamily in a very meaningful sense. For those who support freedom of choice, nothing could be more central to that freedom of choice than the right of a low-income woman to choose to carry a pregnancy to term free from the economic pressures arising from her inability to pay for the costs of the medical care needed. For those who believe that abortion should never be permissible, making available the medical care necessary for a low-income woman to carry a pregnancy to term is essential to alleviating economic pressures which might otherwise influence a decision to terminate a pregnancy.

Additionally, having been deeply involved with several of my colleagues in the efforts in the last Congress to develop the framework for a responsible and sensible approach to dealing with the so-called Baby Doe cases, I have also tried to point out the relationship

between that issue and making adequate prenatal care available to all pregnant women. Although it may not be medically possible to eliminate entirely the incidence of high-risk births, there is absolutely no question that the availability of adequate care during pregnancy can be critical to reducing the likelihood that a child will be born with a serious disabling and life-threatening condition.

The cosponsors of S. 7 include Senators MOYNIHAN, MATSUNAGA, INOUE, RIEGLE, METZENBAUM, DODD, LEVIN, KENNEDY, ANDREWS, SIMON, LEAHY, BOSCHWITZ, PROXMIRE, and ROCKEFELLER.

Again, I would like to express my appreciation to the Senator from Oregon [Mr. PACKWOOD] for his support and work on behalf of this provision, and for his commitment to helping ensure that reproductive choice includes the right to carry a pregnancy to term without the economic pressure that lack of access to medical assistance can create.

Finally, my thanks to the Senator from Texas [Mr. BENTSEN] for his efforts on the Finance Committee on behalf of both the adoption assistance provisions and the Medicaid coverage for low-income pregnant women and to the Senator from Louisiana [Mr. LONG], the ranking minority member for his support as well.

CONCLUSION

Mr. President, I am very pleased that these provisions relating to adoption assistance and medical care for low-income pregnant women have been included in this measure. I believe that both initiatives represent a significant step forward in our continuing efforts to improve the lives of countless numbers of infants, young children, and their families.

SOLE COMMUNITY HOSPITAL AMENDMENT

Mr. President, I am very pleased that S. 1730, the Consolidated Omnibus Budget Reconciliation Act of 1985, as agreed to by the conference committee includes a provision to require that certain sole community hospitals be provided with adjustments in their Medicare payments to account for services instituted after the end of the so-called base year. This provision—which derives from an amendment, amendment No. 1032 to S. 1730, that I proposed with Senator BURDICK on November 13, 1985—would correct a very serious inequity affecting Redbud Community Hospital in Clearlake, CA—and possibly a number of other sole community hospitals.

Mr. President, Redbud Hospital has been engaged in litigation for a year and a half with the Health Care Financing Administration in HHS in an attempt to obtain a fair and equitable Medicare payment rate which would take into account the three new services—intensive and cardiac care units and a new pharmacy—that the hospital instituted after the end its base year, 1982-83. As I explained during the debate on my amendment—which

appears in the RECORD for November 13, beginning on page S15351—these services were instituted after many years of planning and development and are necessary for the hospital to meet the needs of the predominantly elderly community it serves. Without financial relief to meet its resulting increased operating expenses, the hospital could very well be forced to default on its State-issued bonds or reduce its services to those who depend on it for their care.

After 18 months of proceedings, the lawsuit is still pending. In the process, the hospital has nearly exhausted its resources for continued litigation.

With this legislation, Redbud will be able to bring the litigation to a close, and receive just compensation. And the residents of Clearlake Highland will be able to have access to a full range of needed life-saving hospital services.

I would like again to thank the chairman of the Finance Committee [Mr. PACKWOOD] and the ranking minority member [Mr. LONG] for their assistance when I, along with Senator BURDICK, offered the amendment and for their support of the provision in conference. My thanks also to Bob Hoyer and Michael Stern, two absolutely splendid professionals, for their help and expertise on this matter.

Mr. McCLORE, Mr. President, the Committee on Energy and Natural Resources reached conference agreements with the House on all matters within its jurisdiction. Specifically, subconference 11 on energy programs reached agreements on provisions regarding the Strategic Petroleum Reserve, Federal Energy Conservation Shared Savings, Biomass Energy and Alcohol Fuels Loan Guarantees, and synthetic fuels. Subconference 12 reached agreements on provisions regarding uranium enrichment. And, subconference 13 reached agreement on Outer Continental Shelf issues.

These conference agreements achieve savings of \$6,162 million and \$6,076 million in outlays in fiscal year 1986 and \$6,124 million in budget authority and \$6,504 million in outlays for the 3 fiscal years 1986 through 1988. The savings exceed the committee's original targets in its reconciliation instruction.

In summary, these conference agreements are consistent with the assumptions in the budget resolution in two areas: First, they achieve savings in DOE's Strategic Petroleum Reserve Program by reducing the minimum average annual fill-rate from 159,000 to 35,000 barrels per day. Second, the conference agreement includes provisions to settle the legal dispute between the Federal Government and several States regarding the disposition of certain bonuses and rents held in escrow as of March 31, 1985. As assumed in the Senate and House committee reconciliation instructions, the conference agreement distributes 27

percent of such bonuses and rents to the affected States as well as interest accrued thereon. However, as did the Senate and House passed measures, the conference agreement also includes the disposition of other OCS revenues in dispute, specifically, royalties, both retrospectively and prospectively.

In addition, the conference agreements achieve savings in budget authority and outlays in four areas not assumed in Senate and House reconciliation instructions, which are uranium enrichment, DOE energy conservation programs, DOE biomass loan guarantees, and synthetic fuels.

STRATEGIC PETROLEUM RESERVE

The Strategic Petroleum Reserve, which was authorized in 1976, continues to be the United States' principal line of defense in the event of another severe disruption of international energy supplies. When we began the new fiscal year on October 1 there were approximately 489 million barrels of crude oil in storage.

By comparison, the conference agreement provides for a minimum fill-rate of 35,000 barrels per day through fiscal year 1988. At this reduced fill-rate, at the end of fiscal year 1986 there will be approximately 500 million barrels in storage. However, the conference agreement specifically requires that a minimum average annual fill rate of 35,000 barrels per day be maintained until 527 million barrels of oil are stored in the SPR.

This change in the minimum fill-rate will achieve fiscal year 1986 outlay savings of \$1,455 million. The corresponding outlay savings over the 3-year period of fiscal years 1986 through 1988 will be \$4,003 million.

Similarly, the conference agreement regarding SPR facility construction, as did the budget resolution, provides for continued expansion of SPR capacity at all sites toward the objective of filling the SPR to 750 million barrels. Under the conference agreement the available SPR capacity is expected to increase to nearly 550 million barrels by the end of fiscal year 1986. By comparison, at a minimum fill-rate of 35,000 barrels per day, or 12.8 million barrels per year, the cumulative oil fill will be below 550 million barrels through fiscal year 1988. Therefore, this agreement will not constrain in the fill-rate of 35,000 barrels per day.

URANIUM ENRICHMENT

The Senate-passed bill, as did the recommendation of the Committee on Energy and Natural Resources, established an authorization for the Department of Energy's uranium enrichment program. The effect of this authorization was to require the program to operate at no additional cost to the Treasury. In addition, the Secretary of Energy is directed to make an initial repayment to the Treasury from current revenues, if any, of excess expenditures accumulated over the past several years.

By comparison the conference agreement authorizes uranium enrichment appropriations during fiscal years 1986 through 1988 at a level equal to estimated revenues less an amount determined by the Secretary of Energy, which is to be paid to the Treasury in partial repayment of unrecovered Federal investments. In addition, any revenues in excess of expenditures are to be deposited in the Treasury in repayment of the debt identified by the Secretary in accordance with the conference agreement.

The resultant budgetary savings under the conference agreement in fiscal year 1986 are \$190 million in budgetary authority and \$120 million in outlays. The savings over the 3-year period 1986 through 1988 are \$724 million in budget authority and \$596 million in outlays.

In addition, the conferees, as was the Senate, were concerned about the impact of the recent decision of the U.S. District Court for Colorado, which could have serious long-term implications for the program and its revenue flow. Therefore, the conference agreement requires a report from the Secretary within 60 days of enactment on the effect of such court decision on DOE's uranium enrichment program and steps that may mitigate those effects.

DOE ENERGY CONSERVATION PROGRAMS

The conference agreement, as did the Senate-passed bill, authorize Federal agencies to enter into certain contracts for energy efficiency improvements in Federal buildings. Under such contracts the contractors will be paid from money saved as a result of the energy efficiency improvements installed in Federal buildings.

According to the Congressional Budget Office, this shared savings program can save the Federal Government approximately \$8 million over the next 3 years, with a potential of \$350 million over the next 10 years.

OUTERCONTINENTAL SHELF 8(G) REVENUES

Mr. President, the conferees also agreed on language resolving the litigation over section 8(g) of the Outer Continental Shelf Lands Act. The statement of managers explains the result of the conference, and with respect to the 8(g) issue itself, I think the conference did a remarkable job given the time limitations we were under. The agreement will resolve with finality all issues with respect to the distribution of receipts from leases within the 8(g) zone.

The Senate was able to prevail in eliminating the instant recoupment provisions of the House measure. The Senate was also able to delete unacceptable provisions of the House measure which would have placed limitations on how States could spend their share of these receipts and which would have mandated a 33-percent passthrough to localities. The Senate conferees agreed to a formulation on the sharing of information which we feel adequately protects the confiden-

tiality of certain information and which also will avoid enormous paperwork.

Consistent with the report language which had been included in the Senate, the conferees agreed to specifically exclude Federal income or windfall profits taxes from the distribution of receipts. The House agreed with the Senate position which permits the Secretary to proceed with leasing in the absence of a unitization agreement and also with the Senate position which provides some flexibility to the Secretary of the Treasury in obtaining the highest return on invested funds. The House also agreed with the Senate language on section 7 disputes involving Alaska and on the extinguishment of all claims if a State were to accept payment.

In general, Mr. President, I am happy to report that the Senate position was maintained with respect to the real issue before the conference with respect to the budget. One issue which should perhaps be mentioned is the issue of whether pre-1978 leases are included. To a great extent, as the Senator from Louisiana pointed out in the conference, the issue, if there was one, was settled in the Senate by the defeat of the Evans-Metzenbaum amendment. The House conferees raised the question as to whether the statement of managers should indicate that such leases were not included. Since the bill language was identical, statutory change was not possible. The House conferees considered and then rejected a motion to adopt such report language. As a result there should be no misinterpretation over what the language of the measure means.

There were two unrelated issues which were raised in the conference. The House had adopted an amendment to section 19 of the OCSLA with respect to State review of leasing plans. The House position would have provided an effective State veto over and Federal activities by requiring the Secretary to comply with a substantial-evidence test in rejecting any State recommendations, and then only if he were to find that the damage to the national interest outweighed the environmental consequences. It is clear that any single lease could hardly meet that test.

I regret that the Senate accepted any amendment on this section. I believe that we went further than we should have back in 1978. Because the dynamics of this budget process required it, however, we did agree to language which makes it clear that when rejecting a State recommendation, the Secretary should make a point-by-point response with his reasons. I think that is useful. The present arbitrary and capricious standard has been retained for review of the Secretary's decisions. We agreed to move the standard to section 19(c) for clarity and to specifically reference the Administrative Procedures Act so that

there could be no misunderstanding. The decision is strictly that of the Secretary and there should be no implication that anyone—a Governor or a court—is to substitute its judgement for that of the Secretary, especially given the present situation in the Middle East. As a substantive matter, this amendment does not change existing law. I do agree with the procedural change which requires a point-by-point response. I think that could be read into existing law in any event, and it also seems to me to be a matter of simple courtesy.

The second nongermane issue was the so-called Buy America provision. I regret to say that the Senate conferees receded to the House on this issue. I think this is a bad amendment. It violates our international trade obligations. It will cost Americans jobs. It will increase the deficit. It will jeopardize our already imperiled energy security. It will complicate and further delay our leasing program. It will cost the taxpayers and consumers of this country money. Unfortunately once again emotion came out ahead of common sense. I think the sponsors and the rest of us will regret it.

Mr. President, with the sole exception of the last two amendments, I think that the Senate conferees have done an outstanding job and I urge my colleagues to support the work of the conference.

Under the conference agreement the resultant budget savings from this action in fiscal year 1986 are \$4,501 million in budget authority and outlays, which is comparable to the committee's action and the Senate-passed bill.

SYNTHETIC FUELS

Mr. President, as I noted earlier today in my remarks on the continuing resolution for fiscal year 1986, on numerous occasions since the 1973 oil embargo I have risen to address the need for the development of a commercial synthetic fuels capability in the United States. I would refer my colleagues to that statement, rather than repeat those remarks at this time.

As we are all aware, Mr. President, the United States Synthetic Fuels Corporation was established in 1980 by the Energy Security Act to create a domestic synthetic fuels capability as an alternative to oil imports. However, the House-passed Omnibus Reconciliation Act for 1985 contained provisions terminating the Corporation, as did the House-passed continuing resolution. The Senate-passed reconciliation measure did not contain comparable provisions.

Moreover, this conference agreement contains similar provisions to those in the continuing resolution, terminating the Synthetic Fuels Corporation. As I said earlier, after considerable debate and repeated attacks by its critics, the Synthetic Fuels Corporation under this conference agreement and the continuing resolution will fi-

nally fall before the budgetary axe, at the very time that it is about to successfully achieve its statutory mission.

As I noted earlier, the position of the House prevailed in the conference, following change in the administration's position in favor of abolition of the Synthetic Fuels Corporation. The conference agreement, as well as the continuing resolution, as of the date of enactment, would restrict the Board of Directors of the Corporation from making any new awards for financial assistance under the Energy Security Act after enactment of this provision, except that the Corporation and its successor (Department of Treasury) is to perform and complete the undertakings of the Corporation's existing, legally binding, awards or commitments. By the statutory terms of the conference agreement, nothing in this Act shall impair or alter the powers, duties, rights, obligations, privileges, or liabilities of the Corporation, its Board of Directors, or project sponsors in the performance and completion of the terms and undertakings of a legally binding award or commitment entered into prior to the date of enactment.

As I discussed in my remarks on the continuing resolution, this restriction also applies to changes in existing financial assistance awards or commitments of the Corporation. It is not intended, however, that this limitation on changes or modifications to existing financial awards or commitments restrict changes which may be necessary as part of normal contract monitoring or administration activities. This restriction on changes, in coordination with the rescission of funds in the Energy Security Reserve, does however limit the authority of the Board (or the Secretary) to make changes which would increase the maximum obligations authority established by the Corporation with respect to any such award or commitment.

The Corporation has entered into a legal binding financial assistance award for the Union Oil Parachute Creek Oil Shale Project which obligates the Corporation to pay up to \$500 million in price guarantee payments for the production of shale oil from new improved facilities to be constructed by Union Oil Company at its existing oil shale facility in Colorado. This award also legally commits the Corporation to use its best efforts to complete documentation of the terms of a loan guarantee, and execute the loan guarantee agreement, of up to \$327 million within the \$500 million in obligational authority available for the price guarantee payments. The language of the provision preserves the Corporation's obligation to complete the terms of the Union Oil loan guarantee agreement. Further, it recognizes the need for consultation with the Secretary of the Treasury on the interest rate and timing, and substantial terms of the loan guarantee and requires that the Secretary provide

such consultation within 30 days of enactment of this provision.

The Board of Directors of the Corporation is continued for 60 days after the date of enactment in order to perform these and other functions, including transmission to appropriate authorization committees of the Senate and House of a report containing a review of implementation of the Corporation's business plan, which also fulfills the requirements of section 126(b)(3) of the Energy Security Act.

A further indication of the effect of these provisions on the Union agreement is reflected in my colloquy with Senator ARMSTRONG on the continuing resolution, and I refer you to those remarks earlier today.

Under both this conference agreement and the continuing resolution, within 120 days of enactment the Corporation shall terminate and transfer all its functions to the Secretary of the Treasury in accordance with the provisions of existing law.

Because the Corporation is being terminated earlier than originally envisioned by the Congress, the conference agreement provides, first, that, respect to the salaries and benefits of Directors, officers and employees of the Corporation, no officer or employee shall receive a salary in excess of the rate of basic pay payable for level IV of the executive schedule.

Second, the Director of the Office of Personnel Management shall determine the amount of compensation Directors, officers, and employees shall be legally entitled to under contracts in effect on the date of enactment. With respect to compensation and benefits not covered by contract, no change shall thereafter be allowed or permitted unless the Director of the Office of Personnel Management agrees that such change is reasonable.

While the Corporation's by-laws and written policies and procedures in effect on the date of enactment of the Act will remain in effect until changed, the Corporation will not be permitted to waive any of their requirements which are necessary for a Director, officer or employee to qualify for pension or termination benefits under the Corporation's by-laws or written personnel policies and procedures in effect on the date of enactment.

Mr. President, as I discussed earlier on the continuing resolution, this abolition of the Synthetic Fuels Corporation will go down in history as one of the major breaches of faith between the Federal Government and American industry. The losers, however, are the American people.

Because of an extraordinary national need, we asked American industry to step out to the frontier of energy development in the United States and undertake the significant technological and financial risks necessary to advance the commercial development of

synthetic fuels. It was recognized that this was to be a joint effort in recognition of the risk involved. What was at stake was greater control of our energy future, and the resultant national security benefits energy independence would provide.

By our action today we may well be sacrificing the security of our energy future. Just as important, we are clearly sacrificing significant private sector investment that has been made and would likely not have been made at this time if it were not for the Federal synthetic fuels initiative that led to the creation of the Synthetic Fuels Corporation. Once again the Federal Government has failed to fulfill its commitment to the American people and to the companies that have relied on it.

Mr. President, a table summarizing these savings appears at this point in my remarks.

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS, COMMITTEE ON ENERGY AND NATURAL RESOURCES

(Changes from resolution baseline, in million of dollars)

	1986	1987	1988	Total
Direct spending				
Synthetic fuel				
BA				
OL	-96	166	234	-496
Synthetic fuels				
BA				
OL				
OCS receipts				
BA	-4,501	1,685	1,413	-1,403
OL	-4,501	-1,685	1,413	-1,403
Authorizations				
Strategic petroleum				
BA	-1,471	1,185	-1,335	-3,991
OL	-1,359	-1,331	-1,313	-4,003
Spending savings				
BA		-2	-4	-6
OL		-2	-4	-6
Unfunded retirement				
BA	-190	-248	285	-724
OL	-170	-209	-267	-597
Total				
BA	-6,162	250	-212	-6,124
OL	-6,076	-23	405	-6,504

CONCLUSION

Mr. President, these conference agreements appear in titles VII and VIII of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Mr. MATTINGLY. Mr. President, I rise to express my deep concern over a provision in this reconciliation conference report relating to the recalculation of the Federal Medical Assistance Percentage [FMAP] for the Medicaid Program. I do so primarily because my home State of Georgia is seriously hurt by the provision.

Under current law, the Federal matching rate is calculated biannually. Between October 1 and November 30 of even-numbered years, the Secretary of Health and Human Services is required to promulgate the FMAP which will be in effect for the next 2 years, beginning in October of the odd-numbered years. In other words, Medicaid matching rates for fiscal years 1986 and 1987 were promulgated in the fall of 1984, to be implemented in October of this year, and it was on the basis of these rates that States have planned their budgets.

The Consolidated Omnibus Budget Reconciliation Act of 1985 as passed by the Senate contained a provision which would provide for annual recalculation of FMAP rates, beginning in 1988. Mr. President, I did not object to this provision. It was fair, it treated all States equitably, and it would not have disrupted the current calculation and budget-planning cycle, since FMAP rates were scheduled for recalculation in 1988. Unfortunately, the House-Senate conference tampered with the provision by rolling back the effective date of the recalculation to 1987. The effect of this, in my opinion, is disastrous. For one thing, it is anticipated that this alteration in the effective date costs the Federal Government about \$64 million. Twenty-six States gain by this recalculation. Their windfalls vary from over \$30 million to \$280,000 in 1987. Thirteen States lose Federal matching dollars. My home State of Georgia, for example, is denied \$13.38 million.

I want to reiterate, Mr. President, that I have no quarrel with the concept of an annual recalculation of the FMAP or of implementing the change in 1988. But I believe that this issue has been dealt with in an inappropriate and unfair manner. As I have said, this change comes in the middle of a calculation cycle, essentially changing ground rules in midcourse. States which lose substantial funding could not have anticipated that they were at risk of losing funds. They had no opportunity to present their case on this issue. But they must live with the results. I have heard from the Governor of Georgia, Joe Frank Harris, who has stressed the hardship this will be to the Medicaid Program in Georgia. He has already prepared his budget for fiscal year 1987 which he presents to the Georgia general assembly in January. This budget, of course, was based on current FMAP rates. Because of precipitous action by the conferees, he can no longer count on the \$13 million currently due the State.

Furthermore, the recalculation issue was not addressed in the House prior to conference, and the Senate did not deal with the 1987 date prior to that time. Given those facts, I question the appropriateness of the conferees' action.

The proponents of the change have argued that we must provide adequate Federal assistance to those States which benefit by the change, that is, those States whose economies have declined over the past year. I believe that equal consideration should be given to all States, based on their individual Medicaid Programs and population needs. Consider this fact, Mr. President. Of the 26 States which gain from the recalculation provision—over one half of those States—14 continue to have per capita income levels higher than that of the State of Georgia. Georgia has traditionally had a per capita income level below the national average, and although the

State's economy is improving, it still lags behind other States.

I want to point out as well that Georgia has always had a modest Medicaid Program. Georgia provides only 17 optional services, while other States provide as many as 31. In addition, the State has made serious and successful efforts to make its program fiscally responsible. Georgia instituted a prospective payment plan for Medicaid before the Federal Government considered and implemented such a system for the Medicare Program; it was one of the first States to have home and community-based care, a cost-effective alternative to nursing home care; and Georgia has implemented a number of other cost-containing practices such as the requirement of prior approval for elective surgery, mandatory outpatient surgery for certain procedures, restriction on emergency room use, limitation of weekend admissions to emergencies, and establishment of a cost avoidance system which anticipates ineligible claims prior to payment. Several of these practices are now being adopted by the private sector in its effort to contain rising health care costs. The point I am making, Mr. President, is that the Georgia Medicaid Program does not have fat to trim in order to compensate for the sudden, unanticipated loss of over \$13 million. I find it difficult to find fairness in a half-time rules change which provides additional funding to States with more generous Medicaid Programs and higher per capita income levels while penalizing a State such as Georgia.

In 1984 I urged the Senate, and particularly my colleagues on the Finance Committee, to consider approaches which treat all States equitably and fairly when considering the Medicaid Program. In addition, I urged the initiation of a discussion of our national goals and objectives for the Medicaid Program. I vigorously renew that appeal today.

This recalculation provision is onerous for my State and for others. It is my sincere hope that we can rectify this problem next year by giving consideration to the adversely affected States and by committing ourselves to a fair-minded, even-handed treatment of all States when we deal with the Medicaid Program in the future.

Mr. BYRD. Mr. President, the conference report on the reconciliation bill on which the Senate is about to act represents a significant step toward reducing the record budget deficits created over the past 4 years. The conference agreement will reduce spending by about \$69 billion over the next 3 years and raise about \$14 billion in revenues over the same period. For a total deficit reduction of \$83 billion over the fiscal year 1986-88 period.

This bill represents real deficit reduction, arguably the only significant,

real deficit reduction bill that the Senate has enacted this year.

Mr. President, this reconciliation bill alone will not solve the deficit problems that the Nation faces. But it does show that Congress is capable of taking the necessary actions.

However, I would caution my colleagues that the budget cuts envisioned by the Gramm-Rudman amendment will be about three times greater next year than those contained in this bill. Thus, this reconciliation bill is not the end of the road, it is merely one more milestone in reducing the deficit. There is a much longer and harder road ahead of us next year.

Mr. President, there are a number of specific issues in the reconciliation bill which are of particular concern to the people of West Virginia. In general, these issues have been resolved in ways that will benefit the people of my State.

One of the provisions in this bill that especially pleases me and many of my constituents is that pertaining to the Employee Retirement Income Security Act (ERISA). Several loopholes in the current law are closed, and additional, needed resources are provided to the pension insurance system, specifically the Pension Benefit Guaranty Corporation to care for pension beneficiaries whose plans are assumed by the PBGC due to distress of the companies for which they work or have worked.

Most important to West Virginia, the ERISA amendments are crafted in such a way that they will not disrupt the delicate steps now being taken by the Wheeling-Pittsburgh Steel Corp. to reorganize and emerge from bankruptcy. Over 4,000 jobs in West Virginia hang in the balance. I am relieved, as are those 4,000 workers, their families, and their communities, that this situation was resolved satisfactorily.

I wish to thank the conferees who were part of resolving this issue, especially the distinguished junior Senator from Ohio, Mr. METZENBAUM, and the senior Senator from Pennsylvania, Mr. HEINZ.

I would also like to thank my colleague from West Virginia, Mr. ROCKEFELLER, for helping to assure this outcome.

The conferees also adopted a provision that is a fair, reasonable, and workable solution to restore solvency to the Black Lung Trust Fund.

This compromise was developed by the joint BCOA-UMWA industry committee—composed of representatives of the major coal industry companies and the United Mines Workers of America—as an alternative to the original House and Senate proposals. It provides for a 10-percent increase in the coal excise tax coupled with a 5-year moratorium on the trust fund's interest payments.

This legislation is a responsible approach in achieving solvency of the Black Lung Trust Fund in light of the changes made in the 1981 act. The

consensus legislation adopted in 1981 tightened the eligibility criteria for claims and doubled the excise tax on coal. Those amendments resulted in the rate of claims being approved dropping from 40 percent to just 3.3 percent in 1985.

I wish to commend the Senate and House conferees for their fine work this issue. In particular, I wish to commend Congressman SAM GIBBONS. I also wish to commend Senator ROCKEFELLER for this fine work in pursuit of this compromise. It is imperative to return the Black Lung Trust Fund to solvency, and I am pleased that we have taken the steps to do this in a fair and reasonable manner.

The reconciliation bill also contains provisions relating to the funding of the Superfund Program, a program designed to clean up the Nation's abandoned toxic waste dumps. Those provisions establish an equitable distribution of the burden of financing the Superfund through a broad-based manufacturing excise tax and a petroleum and chemical feedstock tax. This tax structure will provide adequate resources to fund the Nation's toxic waste cleanup program without jeopardizing the competitiveness of the American chemical industry in world markets.

Mr. LAUTENBERG. Mr. President, I rise to oppose the fencing of the Superfund funding in the reconciliation bill. The funds would be collected, but not spent. They would be held back until the Superfund conference is concluded sometime next year. They would be held back from use to clean up the hundreds of toxic wastesites that plague my State and States across the country. They could be used as leverage against those members of the conference favoring strong Superfund but concerned about the fund-starved program to swallow a weaker bill. The outcome of the reconciliation conference on Superfund is very disappointing to me for these reasons.

Mr. President, while I would have preferred to see a \$10 billion Superfund, I supported the taxing mechanism included in the Finance Committee's funding package. I believe in this instance that a broad-based tax is justified, because a broad-based spectrum of industry contributes to the toxic waste problem across this Nation. I withheld pushing for the inclusion of temporary Superfund tax extension pending the outcome of the reconciliation conference on the Finance package. And now, I can only express my sincere disappointment that the reconciliation conference failed to provide temporary funding for the program until we conclude the conference on the reauthorization of Superfund.

On December 10, I introduced a bill to temporarily extend the expired taxes for Superfund with the chairman of the Environment and Public Works, Senator STAFFORD, and Senators DURENBERGER, MITCHELL, BAUCUS, and MOYNIHAN. Since introduction, an-

other nine Senators have cosponsored this measure.

Mr. President, I had planned to push the measure had the reconciliation conference failed to include a Superfund tax. In effect, the conference did fail to include a tax that will benefit the program at this critical time. By fencing the funds, the program will continue to suffer from funding constraints over the months ahead.

I am very concerned about the state Congress leaves the Superfund program in as we go home for the holidays. On September 30, the Superfund tax expired, and the program has been brought almost to a standstill. EPA has funding for the minimum of duties: administration of the program, emergency response actions and a limited number of site remedial investigation and feasibility studies. The Agency has had to fund these activities primarily by pulling back funds from site cleanups, studies, interagency agreements, and other activities.

As a result, EPA has stopped all cleanup activities at 16 New Jersey sites and over 100 sites nationwide. Because less than \$180 million of the original \$1.6 billion fund remains, more sites will be affected until we complete action on the Superfund conference. The Superfund tax included in the reconciliation bill does nothing to change this dismal situation, and I restate my opposition to the fencing of the tax in reconciliation and my disappointment that I did not have the opportunity to bring a temporary extension of the Superfund tax before the full Senate.

Mr. ARMSTRONG. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from Colorado has 5 minutes and 32 seconds remaining. The Senator from Louisiana has 14 minutes and 44 seconds remaining.

Mr. ARMSTRONG. Mr. President, it is my understanding that the senior Senator from Louisiana wishes to speak. I would like to save a little time for the majority leader in the event he wishes to speak. Other than that, I have no further need to use time.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, my senior colleague is on the way, and will be here shortly.

If no one else wants to speak at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. JOHNSTON. Mr. President, I yield to my senior colleague such time as he may desire. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Louisiana has 10 minutes and 15 seconds remaining.

The distinguished senior Senator from Louisiana is recognized.

Mr. LONG. Mr. President, I do not agree with everything that is in this conference report, and I doubt many Senators agree with everything in it.

There are so many diverse provisions here, some of which even cost the Government money, though most of them will save money. On balance, this bill does what a reconciliation bill is supposed to do. It reduces the deficit by many billions of dollars.

I regret to say that it does have some provisions that are not deficit reduction provisions or reconciliation provisions. But that is a fact of life.

We have had to live with that situation in years gone by. I am sure we will have to live with it in years to come.

All factors considered, Mr. President, this bill advances the national interest, and I will be pleased to vote for the conference report.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, if no further colleague wishes to be heard, I yield back the balance of my time.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ARMSTRONG. Mr. President, I will be ready to yield back in just a moment. We are awaiting the pleasure of the leader to determine if he wishes to say a word before we go to a vote.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ARMSTRONG. Mr. President, I am advised that the leader does not require time to speak.

Mr. PROXMIRE. Mr. President, will the Senator yield me 30 seconds?

Mr. ARMSTRONG. I am pleased to do that.

VAT AMENDMENT

Mr. PROXMIRE. Mr. President, the principal dispute between House and Senate reconciliation conferees concerns Senate efforts to include the Superfund's value-added tax in the conference agreement. Why did the House Members wisely object to inclusion of this tax? The answer is simple.

The House has already passed a far superior Superfund revenue provision, the Downey-Frenzel amendment, which relies primarily on increased oil and chemical feedstock taxes and a new waste-end tax for funding the program.

This amendment puts the burden right where it belongs—on the compa-

nies which generate the waste. Now I can hear my colleagues ask, "Isn't that what we did with the VAT?" No way.

The VAT is a sneaky tax, hidden from public view but real nonetheless. Yet, it adds to the cost of every product taxes but it is hard for consumers to identify. Even worse, it risks taxing industries whose processes and products are benign, causing no hazardous waste.

In contrast the Downey-Frenzel amendment adopted by the other body is perfectly straightforward—the polluters pay. And why should they not? After all, they created the mess.

But while considerations of tax fairness alone should be enough to block this provision, there are other reasons for opposing inclusion of the Superfund tax in reconciliation.

First, once Congress adopts a taxing mechanism impetus disappears for conferring on other Superfund items. Unfortunately, many needed program reforms embodied in the House and Senate bills and could disappear.

Even worse, we risk losing the benefit of the wisdom of these of our colleagues who know this program best, but were members of the Environment and not the Finance Committee and so did not participate in the conference.

Mr. President, I hope when the Superfund conference meets early next year this section can be improved and made more environmentally and economically sensitive.

Mr. ARMSTRONG. Mr. President, I thank the Senator from Wisconsin and the Senator from Louisiana. We are ready to go to a vote. I urge all Senators to support the motion.

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

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Maine [Mr. COHEN], the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from North Carolina [Mr. EAST], the Senator from Oregon [Mr. HATFIELD], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Nevada [Mr. LAXALT], the Senator from Alaska [Mr. MURKOWSKI], the Senator from New Hampshire [Mr. RUDMAN], and the Senator from Connecticut [Mr. WEICKER], are necessarily absent.

I also announce that the Senator from Maryland [Mr. MATHIAS] is absent on official business.

I further announce that, if present and voting, the Senator from Connecticut [Mr. WEICKER] would vote "yea."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from North Dakota [Mr. BURDICK], the Senator from Connecticut [Mr. DODD], the

Senator from Massachusetts [Mr. KENNEDY], the Senator from Arkansas [Mr. PRYOR], the Senator from Maryland [Mr. SARBANES], the Senator from Mississippi [Mr. STENNIS], and the Senator from Nebraska [Mr. ZORN-SKY], are necessarily absent.

I also announce that the Senator from Florida [Mr. CHILES] is absent because of illness.

I further announce that, if present and voting, the Senator from North Dakota [Mr. BURDICK] would vote "yea."

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

The result was announced—yeas 78, nays 1, as follows:

[Rollcall Vote No. 379 Leg.]

YEAS—78

Abdnor	Gore	Melcher
Andrews	Gorton	Metzenbaum
Armstrong	Gramm	Mitchell
Baucus	Grassley	Moynihan
Bentsen	Harkin	Nickles
Biden	Hart	Nunn
Bingaman	Hatch	Packwood
Boschwitz	Hawkins	Pell
Bradley	Hecht	Presler
Bumpers	Heflin	Proxmire
Byrd	Helms	Quayle
Chafee	Helms	Riegle
Cochran	Hollings	Rockefeller
Cranston	Inouye	Roth
D'Amato	Johnston	Sasser
Danforth	Kasten	Simon
DeConcini	Kerry	Simpson
Denton	Lautenberg	Specter
Dixon	Leahy	Stafford
Dole	Levin	Stevens
Eagleton	Long	Symms
Evans	Lugar	Thurmond
Exon	Matsunaga	Trible
Ford	Mattingly	Wallop
Garn	McClure	Warner
Glenn	McConnell	Wilson

NAYS—1

Goldwater

NOT VOTING—21

Boren	East	Murkowski
Burdick	Hatfield	Pryor
Chiles	Humphrey	Rudman
Cohen	Kassebaum	Sarbanes
Dodd	Kennedy	Stennis
Domenici	Laxalt	Weicker
Durenberger	Mathias	Zorinsky

So the conference report was agreed to.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

THE SCANLON NOMINATION

Mr. DOLE. Mr. President, may I have the attention of my colleagues?

Some of my colleagues have asked about what we are going to do for the balance of the evening, tomorrow, and the balance of the week. I need to find out first from the distinguished Senator from Illinois and the distinguished Senator from Wisconsin how soon we might vote on the Scanlon nomination.

the Congress will rue the day that it ever saw, much less passed, the Gramm-Rudman amendment.

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

The PRESIDING OFFICER (Mr. STEVENS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

STATUS REPORT

Mr. ARMSTRONG. While we are waiting, I am not quite sure what business will transpire next. But while the leader works on that, I thought I might take a moment to explain to my colleagues what has transpired in the House, and make a couple of observations about the proceedings there.

As you all know, the House has adopted a rule the effect of which is to alter the conference report on the reconciliation bill previously agreed to by the Senate, and has returned the bill to us in an amended form.

In my view this is a most improvident action for the other body to take for a couple of reasons: First of all, because they run a heavy risk that the ultimate effect of this action will be to make it impossible to pass a reconciliation bill in which case some \$66 billion in savings will be lost.

In my judgment there are two reasons why the other body took this action.

I was in the Chamber when it occurred and talked to a number of our colleagues in the other body. I discussed it with them for I guess an hour or so in little informal groups around the Chamber. There were two major themes that I heard raised over and over again.

One was they did not like the value-added tax. Well, as Senators will recall, I do not like the value-added tax either. I tried to explain to Members of the House that this was a package. There were some good things in there, some things I did not care for, but that on balance there was a lot more good than bad, and they were making a big mistake to pass up savings of a very large magnitude because of a disagreement over a relatively small element of the package which is the value-added tax.

The other great theme running through the Chamber as this was under discussion was, well, it is all moot because the President is going to veto the bill.

Since this is a matter that the Senator from Louisiana and I discussed briefly in the early evening, I want to say my assurance was that the President would not veto that based on my evaluation that the field position, Presidential history, the economics of the bill, and other considerations were not shared by others apparently in-

cluding the Director of OMB who spent most of the evening calling Members of the other body and telling them if indeed this bill were passed that the President would veto it, and would do so with great enthusiasm and relish.

I am still not so sure that is true because were this bill to be presented to him either in the form that it has now been adopted by the Senate or in the form passed by the House, it would in my estimation be a foolishly irresponsible act for the President to veto it.

I do not think when he actually looked at it and focused on it that he would do such a thing.

I do not want to take too much time. I want to explain why because this is a matter when this thing all falls apart there are going to be a lot of people who will go back and try to decide who is at fault, who is to blame, what happened, where did things go off the rails after we spent all year trying to get savings, and end up with some \$66 billion savings in it. Why did we not finally get it enacted?

The reason I do not think the President personally would have ever vetoed this bill is very simple, because the savings which are made by this reconciliation bill will occur anyway. Ultimately, they will occur under Gramm-Rudman, but under the Gramm-Rudman formula half of those savings will be made out of the defense function. I do not think that is what the President would want. I think he would feel, if he reflected upon it carefully, the savings as they are made in this reconciliation bill are not only far more responsible but far more in accord with his sense of priorities.

So despite what the Director of OMB may be telling people, I do not believe in the ultimate analysis the President will veto the bill.

In any case, I judge the leader is now ready to proceed. I do not want to delay any further. I want to express my regret to what has happened, the hope we are going to be able to retrieve it, and somehow arrive at an agreeable reconciliation bill that the two Houses can pass and send to the President. And, if that happens, I for one will contact the White House and urge it be signed.

OMNIBUS BUDGET RECONCILIATION ACT

Mr. PACKWOOD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3128.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That pursuant to the provisions of H. Res. 349, the House rejects the conference report on the bill (H.R. 3128) entitled "An Act to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process."

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

In lieu of the matter inserted by said amendment, insert the provisions of the conference report on the bill, with the provisions of Subtitle B of Title XIII (Superfund and Its Revenue Sources) stricken.

Mr. PACKWOOD. Mr. President, I move that the Senate concur in the House amendment with the language of the conference report on said bill as a substitute.

The PRESIDING OFFICER. The question is on the motion.

Mr. CHAFEE. Could the Senator explain exactly what that means?

Mr. PACKWOOD. Yes. We are sending back to the House the conference report as passed by the Senate.

Mr. CHAFEE. Sending back to the House the Senate—

Mr. PACKWOOD. We are sending back to the House the conference report that the House and the Senate originally agreed upon, and that we passed.

Mr. CHAFEE. Thank you.

Mr. EXON. One further question. If I understand it—and I direct my question to the Senator—this reportedly in essence is taking the same measure that we sent them before, and sending it back over to them.

Mr. PACKWOOD. Exactly.

Mr. EXON. That is another way to state it.

Mr. DOLE. They did not understand it the first time. [Laughter.]

Mr. EXON. The majority leader said they did not understand it the first time. Let us hope that is not the result.

Mr. PACKWOOD. I can assure my good friend from Nebraska that I hold the other body in the highest esteem but the majority leader's explanation of the problem carries some greater improvement.

Mr. JOHNSTON. Will the Senator yield for a question?

This reconciliation has the so-called extenders in it.

Mr. PACKWOOD. That is correct.

Mr. JOHNSTON. And the Senator is aware that the freestanding extenders are not likely to pass in this body tonight. Did the Senator get that hint from the drift of things?

Mr. PACKWOOD. Is that a drift I get from the Senator from Louisiana or somebody else?

Mr. JOHNSTON. The Senator may get it directly from me.

Mr. PACKWOOD. I do not know if any freestanding extenders are going to pass tonight or not. I think there will be some freestanding extenders offered. If the Senator from Louisiana is saying there will be no other bills passed tonight other than this report that we now sent out or are about to send out, that is in the power of the Senator from Louisiana to achieve.

Mr. JOHNSTON. I just wanted the message really to get to the House,

that turning down reconciliation will not be quite as cheap as some may think it might be.

Mr. PACKWOOD. I thank my good friend from Louisiana. I hope that his psychology works.

The PRESIDING OFFICER. The question is on the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate to my colleagues that I am not in a position to indicate what we are going to be doing a little later on.

I hope we can come to some resolution. Let me also indicate to my House colleagues, not that they do not understand it, but we hope they understand it better—[Laughter.]

The second time because we believe we have an opportunity here to send the President a rather large savings package.

I am not excited about the tax on finances either. But neither am I excited about being here at 20 minutes to 11 with not much light at the end of the tunnel at this point. I hope that we can resolve our difference. I hope also that we can indicate to our colleagues in the next 20 or 30 minutes how much longer we will be here this evening.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. DOLE. Mr. President, I move that the Senate stand in recess subject to the call of the Chair.

The motion was agreed to; and, at 11:31 p.m., the Senate took a recess, subject to the call of the Chair.

The Senate reassembled at 11:49 p.m., when called to order by the Presiding Officer [Mr. HELMS].

EXTENSION OF CERTAIN TOBACCO EXCISE TAXES AND OTHER EXTENSIONS

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of H.R. 4006, a tax extension bill at the desk.

The PRESIDING OFFICER. Is there objection? Hearing none—

Mr. JOHNSTON. Mr. President, reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. JOHNSTON. Mr. President, I withdraw my reservation.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4006) to extend until March 15, 1986, the application of certain tobacco excise taxes, trade adjustment assistance, certain Medicare reimbursement provisions, and borrowing authority under the railroad unemployment insurance program and to amend the Internal Revenue Code of 1954 to extend for a temporary period certain tax provisions of current law which would otherwise expire at the end of 1985.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1435

(Purpose: Extension of certain expiring provisions)

Mr. PACKWOOD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 1435.

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

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

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. EXTENSION OF INCREASE IN TAX ON CIGARETTES.

Subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to increase in tax on cigarettes) is amended by striking out "and before December 20, 1985" and inserting in lieu thereof "and before March 15, 1986".

SEC. 2. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE PROGRAM.

Section 285 of the Trade Act of 1974 (19 U.S.C. note preceding section 2271) is

amended by striking out "December 19, 1985" and inserting in lieu thereof "March 14, 1986".

SEC. 3. EXTENSION OF BORROWING AUTHORITY UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

Section 10(d) of the Railroad Unemployment Insurance Act is amended by striking out "December 19, 1985" each place it appears and inserting in lieu thereof "March 14, 1986".

SEC. 4. EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS.

Section 5 of the Emergency Extension Act of 1985 (Public Law 99-107) is amended by striking out subsection (a), and by striking out "December 19, 1985" in subsection (c) and inserting in lieu thereof "March 14, 1986".

Mr. PACKWOOD. Mr. President, this is a total substitute for the extension that the House sent to us. It extends four existing programs through March 15, 1986: Cigarette tax at 16 cents a pack, trade adjustment assistance, Medicare physician freeze, and railroad unemployment borrowing authority.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1435) was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

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

The bill (H.R. 4006), as amended, was read the third time, and passed.

The title was amended so as to read:

Amend the title so as to read:

To extend until March 15, 1986, the application of certain tobacco excise taxes, trade adjustment assistance, certain Medicare reimbursement provisions, and borrowing authority under the Railroad Unemployment Insurance Program.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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