Procedurally, it means we will pass the continuing resolution tonight. We will have to do a modification of the adjournment resolution, but we will have one rollcall vote on the Omnibus. There will be a period of time of 30 minutes for debate prior to voting on that bill, and there will be a rollcall vote tonight. That is the first explanation.

I will turn to the Democratic leader to make it a little simpler than that and to comment on what we have agreed to.

Mr. DASCHLE. Mr. President, I think the majority leader has described the situation accurately, and I believe it is the best way in which to resolve what has been a very understandable concern on the part of so many Members on both sides of the aisle. I thank the distinguished Senator from North Dakota for first flagging this question and the issue and calling it to our attention, and all of those who have offered ways in which we might resolve the problem tonight.

The solution has four parts. First, we will pass the continuing resolution that will accommodate the time that will be required for us to resolve this matter.

The second will be that we will pass the conference report and, as the majority leader has noted, we will hold it at the desk.

The third is that we will pass a resolution that will allow the correction in the conference report, an enrolling resolution. That will be part of this process.

Fourth is that the House will take up the matter on Wednesday. We will hold it at the desk until that matter has been resolved, and then send it to the President once this work has been completed.

This is, by far, the safest and easiest and, in some ways, the most confident way in which to address this question. I think, having addressed it in these four parts, we can all be satisfied that we will have accomplished what we set out to do, which is fix the error and pass the legislation.

Many on our side may want to express themselves after we vote on it. People have expressed concern about other parts of the bill and, throughout the day, our colleagues have expressed themselves on the conference report in ways outside of this particular problem. But I think, procedurally, this is the right way to approach the matter.

I think, ultimately, it accommodates the concerns people have had on both sides of the aisle. I hope we can reach agreement tonight to allow this process to go forward.

Mr. KENNEDY. Will the majority leader yield for a question?

Mr. FRIST. Yes.

Mr. KENNEDY. What if the House doesn't act on it? What assurance do we have? Does the majority leader have assurance that the House will act on Wednesday?

Mr. FRIST. We expect them to act. They said they will act. This bill will be held at the desk. If they don't act, this bill will not be sent over. That is part of the unanimous consent request.

Mr. KENNEDY. So it is the understanding of the majority leader that they will act on Wednesday. After that takes place, the ordinary procedure will be followed in terms of the enrollment and sending it to the President?

Mr. FRIST. That is correct.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I am relieved at what has been worked out here, because this will prevent this provision from ever becoming law. This provision never should become law. It would open up the possibility and potential for abuse. I want to repeat for the record that I have no doubt Senator STEVENS would never have used this provision for an untoward purpose. I feel the same way about Chairman YOUNG. The problem was this would have become the law of the land. There will be future chairmen of the Appropriations Committee. I think we all know enough about human nature that if there is potential for abuse, abuse is likely to occur. This is a place where we could have had very serious abuse, with the opening up of people's tax records and the use of those records to punish people, or to help people, or to do other nefarious things that should never be permitted in this country. So I am relieved this will not ever become law.

Mr. FRIST. Mr. President, as the Democratic leader suggested, we realize a number of people want to make further comments. The unanimous consent request we will propound shortly will allow for 30 minutes of debate. Other people have expressed an interest, after the vote, in being able to offer their views, which we encourage. That way, we can go ahead with our unanimous consent request after 30 minutes for debate, to be equally divided, and proceed with a rollcall vote.

UNANIMOUS CONSENT AGREEMENT

Mr. FRIST. Mr. President, I ask unanimous consent that immediately upon the granting of the following consent request, the Senate proceed to the consideration of H.J. Res. 114, a short-term continuing resolution; further, that the joint resolution be read a third time and passed, and the motion to reconsider be laid upon the table. I further ask unanimous consent that the Senate then immediately proceed to the consideration of the conference report to accompany H.R. 4818, the so-called Omnibus appropriations bill; provided further, that there then be 30 minutes for debate to be equally divided between the chairman and ranking member of the Appropriations Committee or their designees; further, that following that debate, the Senate proceed to a vote on the adoption of the conference report, with no intervening action or debate. I further ask unanimous consent that following that vote, the Senate proceed to H. Con. Res. 528, a technical corrections resolution relating to the enrollment of the conference report; provided, that the amendment to the resolution which is at the desk be considered and agreed to and the resolution, as amended, be agreed to, and the motion to reconsider be laid upon the table. I further ask unanimous consent that the conference report to accompany H.R. 4818 remain held in the Senate until the House adopts H. Con. Res. 528, as amended.

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

MAKING FURTHER CONTINUING APPROPRIATIONS

The PRESIDING OFFICER. Under the previous order, the clerk will report H. J. Res. 114.

The legislative clerk read as follows:

A joint resolution (H. J. Res. 114) making further continuing appropriations for the fiscal year 2005, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the joint resolution is considered read a third time and passed and the motion to reconsider is laid on the table.

The joint resolution (H. J. Res. 114) was read the third time and passed.

CONSOLIDATED APPROPRIATIONS ACT, 2005—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the conference report to accompany H.R. 4818.

The legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4818), making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2005, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

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

(The conference report is printed in the House proceedings of the RECORD in November 19, 2004.)

The PRESIDING OFFICER. Under the previous order, there will be 30 minutes equally divided between the chairman and ranking member of the Appropriations Committee. Who yields time?

The Senator from West Virginia.

Mr. BYRD. Mr. President, we are now in day 51 of the fiscal year. In order to finally bring the fiscal year 2005 appropriations season to a close, the Senate has before it a $388 billion, nine bill, 3,016-page monstrosity of a bill. Here it is, right here on the desk. Take a look at it.

Of the nine appropriations bills in the bill, only two were ever debated in the Senate. The conference report includes a miscellaneous division that contains 32 unrelated provisions, most of which have never been considered by the Senate.

There is not a single Member in this body who can say that he or she has read this bill. It contains complex and controversial matters. It contains an across-the-board cut of eight-tenths of 1 percent that arbitrarily reduces veterans medical care programs, health care programs, highway construction, and global AIDS programs.

At midnight last night, a 64-page small business reauthorization bill was put in the bill without consultation. It contains controversial matter that was not in the freestanding bill that the Senate debated over a year ago.

During the development of the appropriations bills this year, the House and Senate reviewed the President's budget carefully and, in some cases, approved provisions that moved the Nation in a different direction from that which the White House wanted. The White House issued veto threats on several of these issues.

The Senate provision to block the administration's overtime regulation which could eliminate overtime pay for 6 million Americans is dropped from the bill.

Provisions that were in both the House and Senate bills concerning Cuba trade are all gone.

The Senate provisions to overturn the Mexico City family planning policy and modify the Kemp-Kasten rules for funding the U.N. Population Fund have disappeared.

At midnight last night, at White House insistence, and through the intervention of the House Republican leadership, the language that would have required a fair competition before Federal jobs are contracted out was pulled from the bill.

Yet here we are on a Saturday, 51 days into the fiscal year, forced to vote on this monstrosity in the form of a $388 billion unamendable, unread conference report.

The bill is entitled ''Consolidated Appropriations Act, 2005.'' It should be entitled ''Lame Appropriations Act, 2005.''

The Federal fiscal year started on October 1. While we have been waiting for the Republican leadership to bring appropriations bills to the floor, the country's schools, the country's hospitals, the veterans seeking health care, the FBI agents fighting terrorism, the construction workers wanting to build bridges and highways, the farmers, and the scientists across America have had to wait.

Why the delay? First, despite the fact that we have a Republican President, a Republican House, and a Republican Senate, our Republican Government could not produce a budget. We had a record deficit for fiscal year 2004 of $413 billion. This Bush deficit exceeded the deficit record that he set for fiscal year 2003 of $375 billion.

Yesterday the President signed a bill to increase the debt limit to a record $8.2 trillion—$8.2 trillion of debt, and yet we do not have a budget. Without a budget, the appropriations process was delayed. We are living in a land of make-believe.

For months, the Senate pushed aside work on appropriations bills to focus on political debates. We pushed aside the people's interest so party interests could take center stage before the elections, but in doing so we failed, once again, to get our job done. This is a lameduck Congress, but the lame politicking in this Senate started long before this week.

Time after time, we have put a hold on the investments in this Nation that every Senator knows we must make in order to put points on a political scoreboard, like this is some big game. But when we play games like these, the real losers are the American people.

Fifty-one days into the fiscal year and, once again—this is not the first time—once again, we have a mammoth, unamendable omnibus conference report in front of us. Sadly, it has become almost an annual ritual that we shackle ourselves with these omnibus monstrosities. It is not good—not good for the Senate, not good for the American people, not good for your political system. We did in 1996, 1997, 1999, 2000, 2001, 2003, and 2004.

When I was chairman from 1989 to 1994 and again in 2001, we produced 13 individual bills annually.

That is the way to protect Congress's power of the purse. That is the way to protect the American people. That is the way to respect Members' rights to debate important legislation. We should not go down this road again next year. The woolly mammoth became extinct ages ago. I hope one day that the same will be said for such mammoth appropriations bills.

The fact that we have such massive legislation on our desks tonight is not the fault of the chairman of the Appropriations Committee, the senior Senator from Alaska, TED STEVENS. He would have moved Earth and sky if it had meant finishing 13 individual appropriations bills on time. But not even his Herculean efforts could change the plain and honest truth of this Senate. Namely, when it comes to this Senate today, politics wins every time.

I would be remiss if I did not thank my chairman, my colleague, my friend, Senator TED STEVENS. This will be the final appropriations conference report that Senator TED STEVENS will guide through this Chamber, and how we will miss that fine, steady hand at the helm. While he does not leave the Appropriations Committee, thank God, he does leave the chairmanship after this session.

I thank him for his unflinching friendship over the years. We do not always agree, Senator STEVENS and I. No. I respect his views. I hope he respects mine. And the same can be said of the chairmen and ranking members of the appropriations subcommittees, both when this side is under control of the Senate and when this side is in the minority. At the end of the day, we always know that party is not the most important aspect of life. Faith in God, love of family, the Constitution and the country, Senator STEVENS knows, as I do, that these are far more important than the fate of a partisan agenda.

Because of the limitations placed on the Congress by the administration, more veterans will go without medical care. I have to say that this administration meddles in the appropriations process more than any other administration I have ever seen in my 46 years as a Senator, and as my 52 years as a Member of the Congress.

Fewer children now will receive the educational services promised by this President and this Congress in the No Child Left Behind Act. Scientists will be left scrambling for research dollars. Families living in rural America will see their clean water pushed off for another year. This bill shortchanges America's future, and I say to all Senators that because of the President's arbitrary limits on discretionary spending, $8 billion worth of increases above the President's budget request that were contained in the bipartisan Senate appropriations bill were eliminated.

Now, that is the White House meddling, a White House that does not seem to recognize that there is a Constitution of the United States; a White House that does not seem to recognize that there is a separation of powers; a White House that does not seem to remember that the legislative branch is not indeed subordinated to the executive branch. Relative to the Senate bills, title I education for the disadvantaged is cut by $661 million; special education by $658 million; the National Institutes of Health by $537 million; EPA clean and safe drinking water grants are cut by $312 million; VA medical care by $235 million; $975 million in cuts in public housing; $277 million is cut from the National Science Foundation and the effort to help communities to hire new police officers; the COPS program is cut by $154 million.

These are big numbers. Honestly, they probably do not mean much to people, but behind each dollar is an American citizen. Cuts to special education mean that fewer children with disabilities will receive the specialized services they need. Cuts to title I mean that young people living in poor school districts will have fewer classroom opportunities to brighten their paths to their future. Fewer dollars for COPS means fewer officers on the streets, the very time when crime is up and the terrorist threat is very real across America.

That brings us to where we are today. The legislation before us includes some increase above the President's request for such programs as veterans medical

care, highways, low-income home energy assistance, State and local law enforcement, the manufacturing extension program, Amtrak and Corps of Engineers construction. However, I cannot vote for this Omnibus appropriations bill, and I extend my sincere apologies to my colleague, TED STEVENS. I honor him and I will always remember him as one of the very finest chairmen of the Appropriations Committees under whom I have served in my 46 years in this body, but I cannot vote for this Omnibus appropriations bill.

I intended this morning to vote for it. Omnibus bills bring the White House to the table and put them in charge. I have said that time and time again. Let me say it again. Omnibus bills bring the White House to the table and put them, the White House, in charge. Omnibus bills allow the White House to set arbitrary ceilings on spending. Omnibus bills preclude Members' rights to debate significant issues. Omnibus bills produce bad legislation, such as the ill-conceived language on giving staff authority to review tax returns.

Need I say more? No, I shall not say more. I will vote no.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the Senator from West Virginia for his comments. He has been my good friend for a long time. He and I have worked together now through my 36 years in the Senate, and as he states, we have not always agreed, but we have always been able to work together in the spirit of friendship and real understanding. I really have great admiration for the Senator from West Virginia.

This is my swan song. I had expected to stand before the Senate and be proud of the product we have before us. I consider what happened in terms of the staff mistake a stain upon my service as the chairman.

Mr. President, H.R. 4818, the Foreign Operations Appropriations bill was the legislative vehicle for the fiscal year 2005 Omnibus appropriations bill.

The conference report includes $388.4 billion in discretionary funding for the following nine appropriations bills: Agriculture, Commerce-Justice-State, Foreign Operations, Interior, Energy and Water, Labor-HHS, Legislative Branch, Transportation-Treasury, and VA–HUD.

Our fiscal year 2005 spending will be within the $821.9 billion discretionary cap.

The conference report includes an across-the-board cut of 0.8 percent for each appropriations bills.

This bill will provide the needed funds to keep this Government going for this fiscal year.

As my chairmanship of our Appropriations Committee draws to a close, I want to take a few minutes to acknowledge and commend some close friends and some of the hardest-working and most dedicated staff I have had the privilege to work with.

Let me begin with my good friend from West Virginia, our committee's ranking member, Senator BYRD, who has been a member of the committee since 1958. He and I have worked together throughout my 36 years in the Senate and it has been an honor to lead this committee with him since 1997. We have not always agreed, but we have always been able to put our differences aside and work toward the common good. I especially want to thank him for his efforts over the past year. We both had hoped and worked toward getting our appropriations bills across the floor on an individual basis. But, this was not possible. And, I want my good friend to know how much I personally appreciate his and his staff's cooperation in recent days as we've brought this process to a close. I will miss the partnership we have shared on this committee.

Chairman BILL YOUNG of Florida has been my partner across the Rotunda since 1999. He has become a good friend and ally in our steadfast efforts to complete our work. He, too, is stepping down from his chairmanship and I want to take this opportunity to thank him and his staff for their assistance and perseverance in getting our work completed. BILL has great respect for the institution that we serve and for his beloved House Appropriations Committee. His heart continues to be with the men and women of our Armed Forces. After the House recesses, he and his wife Beverly regularly visit wounded soldiers up at Walter Reed Medical Center. I hope BILL YOUNG will be returning as chairman of the Defense Appropriations Subcommittee. We will continue to work as a team dealing with modernization of our weapons systems, our military personnel programs, and the national security of this great country.

Over the years, I have had opportunity to work with DAVE OBEY as both chairman and ranking member of the House Appropriations Committee. Congressman OBEY and I have been on opposite sides of a number of issues, but I know of few Members who have his great intellect and passion. DAVE OBEY is a truly dedicated Member of Congress who cares about the institution, and the legislative process. He is a realist who gives his all in debate, but understands compromise and the need to move the business of Government forward.

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

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

FY 2005 Conference

[In millions of dollars]

	BA
Agriculture	16,982
Commerce, Justice, State	40,027
Energy and Water Development	28,488
Foreign Operations	19,705
Interior	20,039
Labor, HHS, Education	143,309
Legislative Branch	3,575
Transportation, Treasury	25,846
VA, HUD, Independent Agencies	93,861
Weatherization (division J)	230
Other items (division J)	107
Across-the-board 0.8 cut (division J)	−3,471
Crime Victims Fund (limitation)	−283
Total discretionary spending	388,415
Requested emergencies:	
LIHEAP	300
Postal equipment	7
Sudan	93

Mr. STEVENS. Now, I would like to turn to the clerks of our subcommittees.

Pat Raymond has worked for me for more than three decades in the Senate and will be retiring at the end of the year. Pat began as my scheduler on my personal staff. She has supported me on the Governmental Affairs, Rules, and Appropriations Committees.

From flextime, to postal reform, to the Federal retirement system, and as staff director on this Agriculture Subcommittee, and earlier on the Treasury Subcommittee, Pat has never lagged in her dedication to hard work. Always thorough and precise, always a stickler for details, Pat's also well-known as a quick study.

Even more important than the attributes I have mentioned, has been Pat's loyalty to me personally, to this institution, and to our Nation. As an Alaskan, she understands the true ''can do'' pioneer spirit that has made it possible for her to accomplish even the toughest of challenges.

The Energy and Water Appropriations bill, in particular, was put together in record time. The product represents a truly remarkable accomplishment. It is comprehensive, yet elegant in its simplicity. It sets out an ambitious course for the Corps of Engineers, Department of Energy, and Related Agencies. With few words, it cuts through years of red tape. After reading the bill, the phrase ''the Secretary shall'' has become one of my favorite phrases in the English language.

Tammy Cameron, our majority staff director, Drew Willison, our minority staff director, and their able staff worked on a bipartisan basis and negotiate a bill with the House in 48 hours. They pulled a rabbit out of a hat I thought was long dead. Tammy just took on this new assignment 2 years ago having worked with Senator CAMPBELL on the Treasury Subcommittee. She has learned a complex subject matter in a very short time, and has earned the respect of the highest ranking generals in the Army. On behalf of Senator BYRD and the entire full committee, I want to congratulate Tammy and the entire staff and extend my heartfelt thanks. And, I hope when these proceedings are concluded, they will all go home to bed and sleep for a week.

Scott Gudes is one of those staffers who has become a member of my family. He keeps moving back into the

house. Scott began with me on the Defense Appropriations Subcommittee working with Sean O'Keefe, where he learned with a real master. And he has used what he learned with Sean ever since.

He served for almost 5 years as deputy under secretary for Oceans and Atmosphere at NOAA, and worked as the acting NOA administrator under secretary in 2001. 1 worked closely with him to resolve the Stellar sea lion crisis which threatened to close down Alaska's fisheries, and almost closed down the Senate. As many of my colleagues will recall, while others were drinking eggnog, Congress remained in session until days before Christmas while we resolved that crisis. Scott was instrumental in that effort, and helped administer the resolution we adopted.

He formerly worked for FRITZ HOLLINGS on the Commerce-Justice-State Subcommittee as well as on the House Foreign Operations Subcommittee. He has a reputation as a fair, even-minded problem solver, and has a heart for the world's oceans. As NOAA administrator, he had a reputation for rolling up his sleeves and working as crew on research vessels, and he has rolled up his sleeves for us.

The senior Senator from Pennsylvania often refers to Bettilou Taylor as the 101st, and for good reason. She has helped me craft new initiatives in Alaska to address health care, labor, and education. Just yesterday, I got a report on the Denali Commission clinic effort, a program Bettilou created. To give an example of the difference just one person can make, since she instituted this program, there are now 41 new health care clinics in remote villages in Alaska that had none, and another 67 in the planning stage and another 26 under construction. Because of Bettilou and her staff, thousands of rural Alaskans now have health care where they had none before.

She is hard driving, but fair; creative but down to earth; demanding yet caring. She knows health policy and education probably better than any single person in the Senate including her subcommittee chairman, and she can run circles around her adversaries. The word ''can't'' is not in her vocabulary. I once described one of her bills as a ''work of art.'' She is truly one of the Mona Lisa's of the Senate.

Mary Dietrich began with me on the Labor/HHS Subcommittee. She has worked now for several years as the clerk on the DC Subcommittee, and I think it is no small coincidence that the District's finances turned around about the same time Mary showed up. She has worked closely with the City government in helping them shepherd the city toward financial solvency, and has taken a particular interest in programs for children and the arts. At the staff level, she almost single handedly pushed through the DC voucher program that no one else thought had a chance of succeeding. But she persevered, and today hundreds of poor children are attending some of the cities best private schools. They will never know who Mary Dietrich is and will never be able to thank her, but today I say thank you on their behalf and on behalf of the Senate.

While Bono has led the public effort to address the worldwide crisis of AIDS/HIV, there is another rock star behind the scenes who has shaped our Nation's response to that crisis. Paul Grove has drafted dozens of provisions to improve the lives of people around the world—from people living with AIDS and TB to children without limbs who receive wheelchairs. Together we have created a new program to bring fresh water to dozens of African villages which has changed thousands of lives each day.

Paul is a child of the Foreign Service and has lived across the globe, including 2 years with the International Republican Institute in Cambodia. Paul is quietly competent, but his actions speak loudly about the kind of person Paul is and the difference he has made in the world.

Rebecca Davies is a woman who has found her moment in history. Tough and uniquely qualified, Rebecca Davies has undertaken the task of helping create a whole new department of the government with the most important role of our time, protecting our Nation from terrorism. She formerly served as Deputy of the Appropriations Committee with service on the Budget Committee. I can probably count on one finger the number of people who have the knowledge of the Federal budget process that Rebecca Davies carries in her head.

She has worked on the Treasury Subcommittee, Agriculture Subcommittee and each time left her mark. Together we created a series of programs for rural America while she was at Agriculture from rural water and sewer programs to funding to reduce the high cost of energy to funds to address public facilities in poor rural communities. As a result of her efforts, the honey bucket, what used to be the primary sewer system in Alaska, will soon be the subject of a museum exhibit.

I rest better each night knowing that Rebecca Davies is looking out for our Nation's homeland.

Bruce Evans began his career on the Alaska scene with my former colleague, Slade Gorton. A product of the Senate, Bruce is known by all as a practical problem solver with a great wit and a ''can do'' attitude. Of all the subcommittees I have worked with, I have probably thrown as much at Bruce Evans as any staffer on my committee. From timber harvest to oil and gas development, if I am working on a controversial issue, you can bet Bruce Evans is finding the solution.

With Bruce's insight and quiet competence, together we have improved the lives of Alaska Natives from health clinics to alcohol treatment to fire fighting to save villages from destruction. And while I don't have a public reputation as an environmentalist, Bruce has worked quietly on my behalf to protect Alaska's wildlife. He created the State wildlife grant program funded this year at about $70 million, provided resources for research on wildlife from walrus to polar bears, provided the funds to take the Aleutian Canada goose off the endangered list, and restored Alaska's fisheries. Denali National Park is often called the crown jewel of the national park system. Bruce Evans is one of the crown jewels of the Appropriations Committee.

Carrie Apostolou began her career with me on the VA-HUD Subcommittee. Intensely organized and detail oriented, ''slipping through the cracks'' is something you never have to worry about with Carrie. She has shepherded the Capitol Visitor Center through the process, and is responsible for the unprecedented security improvements we all see everyday. When the Capitol Visitor Center opens in 2006, it will be a testament to Carrie's persistence.

Dennis Ward, came to our committee 2 years ago with a strong and wide ranging military background. He served in the Air Force as an officer for 18 years, taught political science at the U.S. Air Force Academy, and was a political affairs officer at the Ballistic Missile Defense Organization. He is diligent and tenacious and his abilities were evident to all of us when he worked fervently to complete action on the Military Construction Appropriations bill earlier this year. I look forward to a continued close working relationship with Dennis, as I continue my work on defense issues.

Jon Kamarck is one of the leading public housing experts in the Congress. He is known as a tough adversary, but kind and compassionate. He has exercised the committee's oversight responsibilities with vigor, and many an agency has trembled in its boots when Jon finds indifference or incompetence. He has a reputation for demanding compliance with the laws he helps write, because he is as passionate about good Government as he is about helping people. There is a kinder, gentler side of Jon Kamarck agencies don't always see but I have seen as he meets with Eskimo people with no running water or works with low income people living in squalor. If ever there was a staffer who embodied my personal motto it is Jon Kamarck: ''to hell with the politics, just do what's right.''

And last of all, but first among equals is Sid Ashworth. Sid knows more about the Department of Defense than just about any one I know. She is responsible for the largest annual budget of any department, and has overseen revolutionary changes in our national defense from smart bombs to stealth bombers. She has the daily burden of reading intelligence reports, living every day with the knowledge of the threats that plague us. A former Defense civilian from Hawaii, Sid has

forged a close working relationship with Charlie Houy that mirrors my own relationship with Dan Inouye. Sid is a woman who operates in what is sometimes viewed by some as a man's world. She has broken through stereotyped, and is universally revered by secretaries and generals alike. She is innately fair, intensely dedicated, and fiercely loyal. I am glad I have her by my side every day.

I also want to acknowledge a few of the hardworking staff from the other side of the aisle. Terry Sauvain, Senator BYRD's staff director on our committee, has worked tirelessly along side of my staff to get our work done for the year. Terry has long been known as someone who is able to effectively work on both sides of the aisle. He is known as the master of West Virginia and my staff has learned a great deal from him since I became chairman in 1997.

Chuck Keiffer, Senator BYRD's minority staff director, also deserves my thanks. He came to the Appropriations Committee 4 years ago from the Office of Management and Budget and has vast experience on the fiscal issues. I want to acknowledge him and thank him for his assistance and service during my tenure as chairman.

And finally, I want to thank Charlie Houy, the minority clerk for the Defense Appropriations Subcommittee. Charlie has been with the Appropriations Committee for nearly 20 years, working for both the minority and majority. He is a consummate expert on defense issues and is well respected by those at the Department of Defense and his colleagues on the Hill. As chairman of the Defense Subcommittee, I look forward to continuing to work with Charlie and thank him for all of the hard work he has put in over the past year. I am proud to say he is my friend.

Mr. President, we deal with a lot of important and controversial issues in this body. Maybe nowhere is that more the case than on this Senate Appropriations Committee.

I have been fortunate to have had the opportunity to chair this committee with so much history and tradition. Senator BYRD has often reminded us of the historical context of this committee and our role which was specified by our Founding Fathers in the Constitution. And, I would be remiss if I did not note that I and all our members have been fortunate to have been supported by such outstanding professional staff.

I remember when Senator John C. Stennis was preparing to leave the Senate in 1988. And he attributed his long and distinguished career to just a few things. The first, was good staff.

So, I want to take a minute to recognize one such individual, our committee staff director, Jim Morhard. Jim is a consummate professional. He has truly done it all here on appropriations. He joined the committee after a career in the Navy Comptroller's office, and then in the Senate under Senators Wilson and Kasten. Jim staffed the military construction bill as both the minority and majority staff director. Jim worked on Defense Subcommittee and with some reluctance, answered my request for him to take over the Commerce-Justice-State Subcommittee. This is considered by many the most difficult of our 13 subcommittees to handle.

At Commerce-Justice-State, Jim Morhard distinguished himself working as ''clerk'' or staff director under Senator JUDD GREGG. Jim dealt with a variety of issues from Securities and Exchange Commission fees to NOAA fisheries programs to small business technical assistance. Long before September 11, 2001, Senator GREGG and Jim sought to wake up the Justice Department and FBI and enhance our counterterrorism programs. On September 11, many of those first responders had taken part in training in counterterrorism exercises that were put forward by our Commerce-Justice-State Subcommittee.

In early 2003, I asked Jim to move up and become staff director for the entire committee. There was no staff that I considered more capable or prepared. Jim has always carried out his tasks with tact, fairness and bipartisan spirit. He has great expertise at the technical aspects of the appropriations job. He can make ''the numbers work'' and draft the bill and report language. And, he has the creativity to critically analyze programs and policies and come up with compromises that move the institution forward.

I think about the same day Jim came on board, we began work on the first of two Iraq/Afghanistan supplementals. I think he has been working tirelessly ever since, shepherding through these bills and helping me get the 2004 and this 2005 omnibus appropriations bills through the Senate, through conference and to the President for signature.

The executive branch has countless programs to recognize employees and excellence. Unfortunately, we here in the legislative banch do not. But, one should not assume that we do not recognize personal and professional excellence when we see it. And, I want to express my appreciation to Jim on behalf of the committee and the entire Senate for a job well done.

THE BERING SEA NONPOLLOCK GROUNDFISH FISHERIES BUYBACK PROGRAM

Mr. STEVENS. Mr. President, as part of the fiscal year 2005 Consolidated Appropriations conference report there is a section that provides for a vessel buyback program for the Bering Sea/Aleutian Islands nonpollock groundfish fisheries. Senator MURRAY, is it your intention that section 219 of Title II of the 2005 Consolidated Appropriations conference report is only to provide for a non-pollock groundfish fishery capacity reduction program for catcher processor vessels engaged in these fisheries in the Bering Sea/Aleutian Islands?

Mrs. MURRAY. That is correct. Section 219 is intended to provide a vessel buyback program to be financed through a capacity reduction loan for this fishery.

Mr. STEVENS. It is my understanding that the North Pacific Fishery Management Council will develop the fishery management plans for the Bering Sea/Aleutian Islands non-pollock groundfish fisheries and nothing in this section should be construed to impede or change the council's development of these plans. Is this your understanding?

Mrs. MURRAY. Yes. This section should not be interpreted as requiring the North Pacific Fishery Management Council to rationalize these fisheries. In fact, nothing in this section should interfere with the council process with respect to development of fishery management plans for this fishery or any ongoing work of the council on fishery management plans or ''rationalization'' of other fisheries.

Mr. STEVENS. Senator MURRAY, there is language in this section that states that future amendments to the fishery management plans in the Bering Sea/Aleutian Islands should not ''penalize'' members of any catcher processor subsector for achieving capacity reduction under this act or any other provision of law. Could you explain in greater detail what this means? In particular, I want to make sure that nothing in this act would preclude the North Pacific Fishery Management Council from accommodating CDQ interests in future Bering Sea and Aleutian Islands non-pollock fishery management plans.

Mrs. MURRAY. Yes. This language does not prevent the North Pacific Fishery Management Council, National Marine Fisheries Service, or any other agency from enforcing any Federal law with respect to any member of this sector, including the conservation and management provisions of the Magnuson-Stevens Act. The act shall not prevent the council from raising the CDQ share of the harvest for this fishery consistent with past Bering Sea and Aleutian Islands rationalization efforts or as part of any eventual rationalization process. And finally, this reference to penalties should never be construed to prevent the council from implementing initiatives to reduce bycatch in this sector, which has historically had the highest bycatch rates in the Bering Sea/Aleutian Islands.

Mrs. MURRAY. Mr. President, over the last several hours, much debate has taken place regarding section 222 of division H of this omnibus appropriations bill. I wish to associate myself with the remarks of many of my colleagues that have insisted that this egregious provision be removed. And, I wish to thank the majority leader and minority leader for establishing a path forward that will ensure that this provision will never become law.

Under the agreement announced earlier by the majority leader, the entire

conference report on the omnibus appropriations bill, once passed by the Senate, will be held at the desk and will not be forwarded to the President for his signature until the House has passed a correcting resolution that will nullify section 222. That correcting resolution will also be passed by the Senate today.

With that guarantee in place, and with the knowledge that section 222 of division H of the omnibus bill will never become law, I am pleased to vote in favor of the bill so that the people of my State and all other States can reap the benefits of the important programs funded in this bill.

Mr. KENNEDY. Mr. President, unfortunately, in the Omnibus bill, the Republican leadership blocked Senator HARKIN's amendment to repeal the administration's rule that denies overtime protections to 6 million workers. Bipartisan majorities in the House and Senate strongly supported the Harkin amendment and it was part of our Senate bill.

In fact, the Senate has voted four times to block the Bush overtime rule, and the House has voted twice to block it. Yet, the Republican leadership keeps refusing to accept the will of Congress and the will of the American people. Instead, it continues its unfair assault on America's workers and their right to overtime pay.

In today's economy, workers are obviously concerned about losing their jobs, their pay, their health benefits, their retirement benefits, and their unemployment checks. Now more than 6 million employees also have to worry about losing their higher pay for working overtime.

These men and women are nurses. They are police officers. They are school teachers. They are long-term care workers. They are assistants in mental health facilities.

Make no mistake, overtime cuts are pay cuts. When workers lose their overtime pay protection, they still work longer hours, but they get no extra pay for doing so, even though they have had the right to time-and- a-half pay for overtime work ever since the 1930s.

Clearly, we need a policy to create more jobs, not eliminate jobs. By taking away workers' right to overtime, the administration's rule undermines job creation, since it allows businesses to require employees to work longer hours for no extra pay, rather than hire new workers.

Pure and simple, denying overtime is a thinly veiled cut in workers' pay and boost employers' profits. In this troubled economy, it makes no sense to ask any workers anywhere in America to give up their overtime pay.

Instead of making hard-working men and women work longer hours for less pay, businesses should create new jobs by hiring more employees to do the work.

We know that employees across America are already struggling hard to balance their family needs and their work responsibilities. Requiring them to work longer hours for less pay will impose an even greater burden in this daily struggle.

According to the Families and Work Institute, two of the most important things that children would most like to change about their parents are that they wish their parents were less stressed out by their work, and they wish they could spend more time with their parents.

The General Accountability Office says that employees without overtime protection are twice as likely to work overtime as employees covered by the protection. In other words, businesses don't hesitate to demand longer hours, as long as they don't have to pay higher wages for the work.

Protecting the 40-hour workweek is vital to protecting the work-family balance for millions of Americans in communities in all parts of the Nation. The last thing Congress should be doing is to allow the new antiovertime rule to make the balance worse for workers than it already is.

Congress cannot look the other way while more and more Americans lose their jobs, their livelihoods, their homes, and their dignity. Denying overtime pay rubs salt in the wounds of this troubled economy. Denying the will of Congress and the American people in this Omnibus bill doesn't settle the issue. This battle is far from over. The fight will continue until workers' overtime rights are restored.

Mr. FEINGOLD. Mr. President, I oppose this omnibus appropriations bill. It has become something of an annual event to consider these massive, must-pass measures. Because this particular bill has come to us in the form of a conference report, we are unable to even offer an amendment to the legislation. Those who crafted this measure are, of course, fully aware that this bill is completely shielded, and as a result they were free to include numerous provisions that would certainly have generated amendments were they to come to the body in an amendable vehicle.

There are many questionable provisions, all of them safe from the scrutiny that the amendment process affords. There will be a few editorials written lamenting some of these provisions, but that will be it. Absent some extraordinary action by Congress, they will become law along with the rest of this measure.

Others will detail the billions of dollars of unauthorized, earmarked spending included in this bill. Let me just note that these questionable provisions come at a very real cost. First and foremost, by approving these provisions, Congress shirks its duty as stewards of the taxpayers' money. We have an obligation to our constituents to ensure that the money we levy in taxes is spent wisely.

Beyond that, by providing funding for these unauthorized, earmarked programs, we are diverting funds from areas that our constituents have told us are true priorities. I am deeply concerned, for example, about the level of funding provided for the National Institutes of Health, NIH. Providing an increase of less than 3 percent is not sufficient to maintain the current pace of biomedical research.

I am pleased to have supported successful recent efforts to double the NIH budget, and abruptly slowing the growth of the NIH will undermine the progress that has been made through this doubling. It is important that we provide NIH with the funding it needs to ensure that we receive the extraordinary health and economic benefits that this vital biomedical research provides.

At a time when our country is facing increases in the number of people diagnosed with serious, costly diseases such as cancer, Alzheimer's disease, heart disease and diabetes, as well as an ever-present bioterrorism threat, biomedical research needs to be a national priority, and as such it needs to be adequately funded.

Devoting billions of dollars to unauthorized special interest earmarks also means less funding for our children. Again this year, Congress and the administration have underfunded elementary and secondary education programs. As schools around our country settle in to their third year under the No Child Left Behind Act, NCLB, we will pass an appropriations measure that does not give states and districts the funding that we promised them in exchange for higher accountability standards. The law requires that States and districts comply with NCLB as a condition of receiving funding, yet we are not providing them the promised resources that will help them to succeed. And I am concerned that the NCLB accountability structure will sanction schools that fail to meet adequate yearly progress despite the fact that Congress is not providing these important resources.

In addition, just 1 day after the Senate and the House passed the conference report reauthorizing the Individuals with Disabilities Education Act, we will pass an omnibus spending bill that underfunds the fiscal year 2005 authorization level contained in that very conference report.

Again we are failing to provide the full 40 percent of special education costs promised to the States when IDEA was enacted in 1975, and, ironically, we are doing it 1 day after telling States that the IDEA conference report puts them on the path to full funding in 6 years. The IDEA reauthorization conference report authorized $12.3 billion for fiscal year 2005, and the omnibus spending bill before us contains $11.5 billion for this purpose. Thus, before the ink on the IDEA conference report is even dry, we are already breaking a promise contained in it to the tune of more than $800 million.

I regret that the Senate missed an opportunity earlier this year to make

special education spending mandatory, and I regret that the well-intentioned authorization levels in the IDEA conference report are becoming little more than an empty promise 24 hours after the Senate and the House agreed to these funding levels.

As bad as what is in this omnibus appropriations bill is what is not in it. The administration was again successful in blocking language included in the both the House bill and the committee-passed bill in the Senate that would have reversed the harmful provisions of the Department of Labor's new overtime rule. Despite repeated bipartisan opposition to this rule in both houses of Congress, the small group of Members who drafted the omnibus conference report stripped out these provisions, which would have prevented millions of workers from losing their overtime benefits under the Bush Administration's rule. I am disturbed that—for the second year in a row—an omnibus appropriations conference report was used as a vehicle to override the will of a majority of Members of both houses with respect to this harmful rule.

And, I am disappointed that the conferees chose to delete language that would have halted the administration's campaign to contract out additional Federal jobs to the private sector. Federal employees should have the right to compete for their jobs on a level playing field.

In addition, I continue to oppose the Administration's efforts to reclassify thousands of jobs that are critical to our national security as not ''inherently governmental'' in nature in order make these jobs eligible to be contracted out.

I also want to especially note that because this omnibus appropriations bill comes to us in an unamendable form, there will not be a rollcall vote on the automatic, back door Member pay raise. As my colleagues know, that issue is germane to the Treasury-Transportation Appropriations bill and thus an amendment forcing a vote on the Member pay raise can be offered to that bill without being subject to a point of order. But, because the Treasury-Transportation bill has been folded into this omnibus package, no one will be able to offer an amendment to force a vote on what will be a roughly $4,000 pay raise that is scheduled to go into effect in January.

This is not the first time the Member pay raise has been shielded in this manner. In one instance, the Treasury-Postal bill was slipped into the conference report on the Legislative Branch appropriations bill, and thus completely shielded from amendment. And during 2002, the Senate did not consider the Treasury-Postal bill at all.

This makes getting a vote on the annual congressional pay raise a haphazard affair at best. And it should not be that way. No one should have to force a debate and public vote on the pay raise. On the contrary, Congress should have to act if it decides to award itself a hike in pay. This process of pay raises without accountability must end. I have introduced legislation to do just that, but until that legislation is enacted, Senate leadership should not shield the Treasury-Transportation appropriations bill from amendments.

Finally, let me join others in expressing my concern about inclusion of a provision in this bill that could reduce access to the full spectrum of reproductive health services. This provision is far too controversial to be shoved into a must-pass Government spending bill, especially when the committee with jurisdiction did not have a chance to consider it and the Senate did not have a chance to debate it.

Mr. President, the appropriations process needs reform. I have been pleased to join the Senator from New Mexico, Mr. DOMENICI in advocating biennial budgeting, and certainly we need to seriously consider that reform. I have also joined with my good friend, the Senator from Arizona, Mr. MCCAIN, in advocating a change to Senate rules that would permit points of order to be raised against many of these extraneous, unauthorized earmarks, and this body should seriously consider that reform as well.

The Senate needs to act on those reforms and others before we consider another one of these giant, must-pass omnibus appropriations bills.

Mr. GRAHAM of South Carolina. Mr. President, I want to concur with the statement issued earlier by Chairman GRASSLEY of the Senate Finance Committee regarding section 222 of this bill.

I don't understand the reasoning or motivation behind this provision. But it is clear that it could be easily abused.

This is a great example of how the process is inadequate in terms of passing legislation without legitimate input from the Members of this body.

The thought of an individual Member of a legislative body, including this one, having access to tax records of individual Americans is unacceptable and must be changed; but equally importantly the process needs to be changed.

I am not attributing bad motives, but this must be changed and I take the chairman of the Appropriations Committee at his word that it will be changed.

We need to change this process to ensure mistakes like this are not made in the future.

Mr. BINGAMAN. Mr. President, I would like to briefly express my concern with section 205(d) of the Energy and Water Development Appropriations Act. This subsection addresses endangered species issues in the Middle Rio Grande in New Mexico.

These issues, particularly in the midst of an ongoing drought, have been very controversial in my home State. Over the last year or 2, however, there has been a commitment by the diverse stakeholders and interest groups in the Middle Rio Grande region to cooperate on creative approaches that would address endangered species needs. These approaches all have the goal of balancing the need for environmental restoration with a recognition of the need to protect the interests of water users who are dependent on the limited supply provided by the Rio Grande.

One thing that has helped to foster this cooperative approach is to fully and completely discuss the different issues facing the stakeholders. This process has included legislation. Last year, the New Mexico delegation collaborated on a legislative provision that was a response to a controversial court decision affecting water use in the Middle Rio Grande. While this effort was not without some controversy, the end product was the result of much discussion and debate, and seemed to be accepted, even embraced, by most of the stakeholders.

Section 205(d) of the Energy and Water bill, while somewhat innocuous on its face, undermines the practice of full disclosure and debate. The provision provides the biological opinion controlling water operations in the Middle Rio Grande, with full protection from legal challenge for a period of 10-years—the effective timeframe of the opinion. In last year's appropriation bill, we provided a maximum of 2 years of protection, which was the most controversial aspect of the provision.

I am concerned that this provision, that will most certainly be enacted into law without any notice or significant comment, may disrupt the cooperative environment that has developed over the last few years. If so, it would be a most unfortunate turn of events. The biological opinion, at least up until now, appears to be effective in allowing water use in the Middle Rio Grande to continue without jeopardizing the existence of the endangered species in the region. That is a positive step. Moreover, given the progress being made and the cooperative methods being employed, section 205(d)'s 8-year extension of a controversial provision, is an unnecessary distraction at this point in time.

I yield the floor.

Mr. CORZINE. Mr. President, I want to address a troubling provision in the Criminal-Justice-State, CJS, Appropriations bill, contained in the omnibus, that applies to any nonprofit legal services organization receiving funding from the Legal Services Commission, (LSC). This ''private money restriction'' precludes these nonprofits from using any of their private funds—including individual donations, foundation grants, and State and local government funds—for any non-LSC-qualified services.

The private money restriction places an unfair and costly burden on private and other non-Federal funds dedicated to helping families in need. As a result of the private money restriction, most

civil legal services providers are forced to stop providing non-LSC-qualified services altogether. Many of the most vulnerable individuals and families—such as certain legal immigrants, including some battered women and children, mothers in prison trying to maintain visitation and custody of their children, and elderly homeowners seeking to file class actions to protect themselves from predatory lenders—find themselves without access to legal services at all.

LSC has attempted a ''fix'' for this problem by allowing organizations to use their own private funds for non-LSC-qualified services only if they create physically separate nonprofits with separate staff, offices and equipment. Wasting scarce private resources on duplicate staff and offices adds significant costs and results in fewer families being served.

Congress can provide a real ''fix'' for this problem by amending the CJS Appropriations bill to treat the privately funded activities of legal aid nonprofits equally with the privately funded activities of other nonprofits. In particular, we can require LSC grantees to abide by the same longstanding rules promulgated by the Office of Management and Budget for nonprofit grantees of Federal agencies and by the IRS for all nonprofit 501(c)(3) and (c)(4) organizations, as well as new rules promulgated by the Bush administration for faith-based groups. These rules authorize nonprofits receiving Federal funds to engage in various privately funded activities without requiring them to maintain physically separate entities with separate staff and equipment.

Under this alternative approach, the restrictions on Federal LSC funds would still apply, whether one agrees with them or not, but they would allow local providers and donors to use private money to serve their communities as they see fit. I hope that in future discussions about the CJS Appropriations bill, we can consider this alternative approach to the problems that this bill will create for America's families and service providers.

Mrs. MURRAY. Mr. President, I am pleased to see that Section 219 of Title 2 of this Act includes the statutory language necessary to authorize and implement a Non-Pollock Groundfish Fishing Capacity Reduction Program for the catcher processor sector of the Bering Sea and Aleutian Islands SAI This program represents a positive step forward for the Puget Sound-based commercial fishing industry. Passage of this Act concludes more than a year-long effort to craft an appropriate capacity reduction program for the catcher processor sector of the BSAI non-pollock groundfish fisheries.

Reducing capacity in these fisheries will improve the ability of the North Pacific Fishery Management Council to manage the groundfish stock and contribute to the long term economic viability of the many businesses and people involved in the harvesting, processing and delivery of the highest quality seafood products to consumers. This is important not just to the fishermen who take such great risks up in the frigid waters of the North Pacific, but to the myriad of small businesses throughout the Puget Sound region that support this industry: ship repair yards, equipment suppliers, insurance brokers, transportation companies, and marketers.

My predecessor, Warren Magnuson, set out 24 years ago to put in place a system to Americanize and manage our nation fishery resources. His hard work and vision, championed also by a young Senator from Alaska, Ted Stevens, led to the innovative regional council structure we know today. I am proud that the North Pacific Council has managed the fisheries in its jurisdiction so successfully that it is singled out in this country as a model for maintaining sustainable fisheries.

Despite the success of the North Pacific Council in maintaining healthy fish stocks, there have been problems in the region as a result of overcapacity in the fishing fleets. The North Pacific Council has addressed many issues to help prevent overcapitalization, including license programs and limited entry requirements, but once there are too many fishing vessels it becomes a very challenging problem. These are situations where development of fisheries has outpaced the ability of the resource to support, either biologically or economically, the fleets of fishing vessels built to harvest this national resource. There is a Federal nexus here, when overcapitalization is the result of Federal programs or Federal management decisions. Congress has a record of stepping in when needed to assist in resolving these problems, and this Act follows the American Fisheries Act, the West Coast Groundfish Buyback, and the Crab Buyback in the North Pacific.

I disagree with those who say that this is a problem caused by the fishermen alone, and that they should bear the brunt of any economic consequences of an overcapitalized fishery. Yes, they do have responsibilities, and this bill makes them part of the solution. It is the remaining fishermen who will be responsible for repaying the loans used to reduce capacity in the fleets. That is an investment from them to preserve their future in these fisheries, and it will contribute to the broader economic stability of the Puget Sound region.

I must add that fisheries legislation is never easy to draft. It is a very technical subject overlaid with the very lively history of participants in the fisheries. As Maggie noted on the eve of passage of the original fisheries management act:

We cannot satisfy everybody. I know fishermen pretty well. They are pretty hard to get to agree on a lot of things. They are independent people.

This sentiment remains very much true today. We have worked hard to accommodate a variety of perspectives in this bill, and I am satisfied that the results are positive.

The Non-Pollock Groundfish Fishing Capacity Reduction Program for the catcher processor sector of the BSAI authorized in this Act is a legitimate use of Federal resources to restore balance in these fisheries and to promote their long term viability. I look forward to working with the people in the fishery and representatives from the National Marine Fisheries Service and the North Pacific Council to implement this program consistent with the intent of Congress.

The purpose of this program is to reduce excess harvesting capacity in the catcher processor sector of the BSAI non-pollock groundfish fisheries. Reducing excess harvesting capacity will contribute to the future rationalization and long term stability of these fisheries. This statement is intended to clarify certain provisions contained in the Act and to facilitate its prompt implementation.

Subsection (a) provides definitions relevant to this Act and defines the four subsectors participating in the capacity reduction program: AFA trawl catcher processors, longline catcher processors, non-AFA trawl catcher processors, and pot catcher processors.

Subsection (b) authorizes a $75 million capacity reduction program for the BSAI non-pollock groundfish fisheries.

Subsection (c) allocates the $75 million in loan authority among the four catcher processor subsectors to reflect their relative participation in the non-pollock groundfish fisheries: $36 million to the longline catcher processor subsector; $31 million to the non-AFA trawl catcher processor subsector; $6 million to the AFA trawl catcher processor subsector; and $2 million to the pot catcher processor subsector. In the event any of the subsectors does not use the funds allocated to them by January 1, 2009, then any remaining funds roll over to a fund available to all four subsectors.

Subsection (d) establishes the basic contractual relationship between members of a subsector who choose to participate in a capacity reduction plan by agreeing to sell their license, their vessel, or both, to the Federal Government. Before the Secretary may disburse funds, a seller must enter into a binding reduction contract with the Federal Government, subject only to approval of a capacity reduction plan pursuant to a referendum described in subsection (e). The binding reduction contract must include provisions governing revocation of all Federal fishing licenses, fishing permits, and area endorsements issued for a vessel, and if relevant, the scrapping of a vessel, that is purchased through a capacity reduction plan authorized by this Act. It is intended that licenses currently attached to a vessel and all associated vessel catch history will be retired.

It is anticipated that the subsectors will use their loan authority to reduce both active and latent capacity. The importance of encouraging the elimination of latent licenses is to prevent the re-capitalization of the fishery from within the fleet. The August 2004

Department of Commerce report on addressing overcapitalized fisheries, U.S. Action National Plan of Action for the Management of Fishing Capacity, identifies latent capacity as a serious problem to be addressed in capacity reduction programs. The report cautions that simply targeting active vessels with large catch histories may result in ctivating the latent boats and licenses, and frustrating the intent of the buyback effort. Unless latent capacity is addressed, the goal of the Non-Pollock Groundfish Fishing Capacity Reduction Program will be undermined.

When dealing with active capacity, a participant will sell both a vessel and its qualified licenses. However, when eliminating latent capacity, there may be circumstances where only a license is purchased through the capacity reduction program. This could occur when a vessel has sunk or was otherwise destroyed by fire or accident, and is not presently active in the BSAI non-pollock groundfish fisheries. There also will be circumstances where vessels have little or no catch history, but have qualified for a license. In this situation such vessels and licenses represent another form of latent capacity and should be targeted in specific capacity reduction plans. In some cases there may be no current vessel named on a qualified license. The price paid to purchase such licenses associated with a sunk or destroyed vessel is expected to be less than the price paid for an active vessel and its licenses.

Subsection (e)(1) establishes a framework within which individual subsectors may develop capacity reduction plans. This includes a fee system that will repay the full amount of a capacity reduction loan amount in a timely fashion. The subsectors may use negotiations, bidding systems, a reverse auction, or other methods appropriate for identifying excess capacity to be reduced. This flexible approach is intended to utilize the knowledge and incentives of the participants in a subsector to develop capacity reduction programs that maximize the elimination of excess fishing capacity at the least cost and in the shortest time.

Subsection (e)(2) authorizes the Secretary of Commerce to review and approve capacity reduction plans devised by each subsector. Once a subsector completes its capacity reduction plan, it is submitted to the Secretary for review to determine consistency with this Act. Subsection (e)(2)(A–E) sets forth the requirements for Secretarial approval. To approve a subsector capacity reduction plan, the Secretary must determine that plan is consistent with the requirements of subsection (b) of section 312 of the Magnuson-Stevens Act, with certain exceptions spelled out in this Act. Each subsector plan must include a fee system for full and timely repayment of the loan, and must achieve the maximum sustained reduction in fishing capacity for the least cost in the minimum amount of time. Maximum sustained reduction may be demonstrated through a showing that the vessels and licenses to be purchased will achieve the greatest reduction in harvest capacity through use of the loan authority available to a subsector. Data related to vessel catch history and performance capabilities may be used to satisfy this provision.

Subsection (e)(2)(E) expressly allows subsectors covered by this Act to upgrade their vessels to achieve efficiencies in fishing operations. This provision does not alter the existing statutory or regulatory restrictions on vessel length, tonnage or horsepower. The North Pacific Council retains authority to tailor vessel upgrades to meet the goals of fisheries management plans within its jurisdiction.

Subsection (e)(3) authorizes the Secretary to oversee referenda by each subsector to approve capacity reduction plans and requires the Secretary to notify subsector participants of an upcoming referendum. Following secretarial review and approval of a subsector capacity reduction plan, the Secretary is required to notify, to the extent practicable, all members of the subsector affected by such plan. The Secretary notice will include information on the proposed fee system, the schedule, procedures, and eligibility requirements for participation in a subsector referendum, and an estimate of the capacity to be reduced. This is purely a notice requirement—not a rulemaking—and it is not required to be published in the Federal Register.

Subsection (e)(4)(A) authorizes the Secretary to implement the individual subsectors capacity reduction plans. Within 90 days after a successful referendum, the Secretary is required to publish in the Federal Register a notice that includes the specific terms and conditions governing the purchase of licenses and vessels and a description of the fee system established for repayment of the loan. This is not a rulemaking. The purpose of this notice is to provide a public record of what has been purchased and how the loan is to be repaid.

Subsection (e)(4)(B) expresses the intent of Congress that Section 312(e) of the Magnuson-Stevens Act not apply to the capacity reduction plans governed by this Act.

Section (e)(5) establishes the authority of the Secretary to collect fees from the remaining members of a subsector necessary to repay the debt obligations incurred as a result of an approved capacity reduction plan. It is intended that the Secretary exercise this authority through regulations that will govern the fee collection system and ensure that the Federal Government can collect such fees. These regulations will bind the remaining members of a subsector and obligate them to repay the capacity reduction loan. Revenues to cover the loan repayment fees will be derived from the sale of fish harvested in the BSAI non-pollock groundfish fisheries.

Subsection (f) establishes the required actions by entities other than the Secretary to impose restrictions on vessels, revoke licenses and associated fishing rights, and scrap vessels. Subsection (f)(1)(A) requires the National Vessel Documentation Center, at the request of the Secretary, to revoke any fishery endorsements issued to a vessel under section 12108 of Title 46, U.S.C. It is expected that the National Vessel Documentation Center will annotate each buyback vessel documentation with language provided by the Secretary to notify future purchasers that they will not be able to receive any fishery endorsements. Subsections (f)(1)(B and C) require the Maritime Administration to restrict a vessel to U.S. flag status and refuse to grant approval for foreign registration or operation under foreign authority by such vessel. Subsection (f)(2) requires that vessels purchased under this Act designated for scrapping conform to the procedures established for a reduction vessel under section 600.1011(c) of Title 50, CFR. Scrapping of vessels pursuant to this provision shall be overseen by the National Oceanic and Atmospheric Administration—NOAA—and performed consistent with NOAA requirements. The cost to scrap a vessel will be paid by the buyback participant.

Subsection (g)(1) specifies the eligibility criteria for participation in the BSAI Non-Pollock Groundfish Fishing Capacity Reduction Program. It also limits participation in the BSAI non-pollock groundfish fishery to ensure the goal of capacity reduction is achieved.

Subsection (g)(2) expresses the sense of Congress that the North Pacific Council continue with its efforts to rationalize the BSAI non-pollock groundfish fisheries. This statement is intended to reinforce the Council commitment to adopt such management measures necessary to promote stability in these fisheries. This includes final action in a timely fashion on Amendments 80a and 80b, and the development and approval of sector allocations for the BSAI Pacific cod fishery. It is the understanding of Congress that the North Pacific Council will take final action on Amendments 80a and 80b by the fall of 2005, and adopt BSAI Pacific cod sector allocations by the end of 2005. Amendments 80a and 80b are particularly important to the non-AFA trawl catcher processor subsector as this fleet seeks to comply with the North Pacific Council pending Improved Retention/Improved Utilization—IR/IU—requirements. It is essential that the North Pacific Council take final action on Amendments 80a and 80b prior to implementing new IR/IU requirements.

Subsection (g)(2)(B) makes clear that subsectors who eliminate excess capacity through a capacity reduction plan authorized by this Act not be penalized by the North Pacific Council. This provision is intended to discourage the Council from reducing a subsector

BSAI non-pollock groundfish allocations as a result of that subsector reduction of fishing effort through programs authorized under this Act. This does not preclude the North Pacific Council from exercising its authority to manage these fisheries, including taking actions to address bycatch concerns or changes in stock levels. In addition, this Subsection would not prevent the North Pacific Council from raising the CDQ share of the harvest for this fishery consistent with past Bering Sea and Aleutian Islands rationalization efforts or as part of any eventual rationalization process.

Subsection (h) requires the Secretary to report annually to the relevant Congressional oversight committees on the implementation of this Act. Reports shall include details on the individual capacity reduction plans, an assessment of their cost-effectiveness, and the achievement of the goals set forth in section 312(b) of the Magnuson-Stevens Act.

Ms. SNOWE. Mr. President, I comment on the portion of the Consolidated Appropriations Act of 2004 that reauthorizes the Small Business Administration. Of particular importance to me is the inclusion of many aspects of my prior bills, the Small Business Administration 50th Anniversary Reauthorization Act of 2003, S.1375, which was approved by the Senate on September 26, 2003 by unanimous consent, and of my more recent SBA bill, the Small Business Reauthorization and Manufacturing Assistance Act of 2004, S.2821. These provisions reauthorize for 2 years the programs administered by the Small Business Administration under the Small Business Act and the Small Business Investment Act of 1958, and contain significant improvements to the SBA's lending and technical assistance programs.

For over a year, I have worked with the House Small Business Committee and the administration, making numerous attempts to accommodate my colleagues and to resolve outstanding issues that blocked the passage of a comprehensive bill. Various forms of my original bill have been introduced over this period in order to help move the other body's stalled legislation, while in the meantime our Nation's small businesses have waited to receive the benefits of improved SBA services that are contained in this bill.

The vast majority of businesses in each State in this country are small businesses. In Maine, 98 percent of businesses are small businesses. By enacting these provisions Congress is fulfilling its obligation in helping our entrepreneurs reach their American dream.

The SBA is a vital resource not only for our Nation's 25 million small businesses, but also for the millions of Americans relying upon small business ownership as an alternative to the ''traditional workplace'' where corporate America once offered life-long futures for workers.

The SBA's fundamental purpose is to ''aid, counsel, assist, and protect the interests of small-business concerns.'' The methods for carrying out Congress mandates include a wide array of financial, procurement, management, and technical assistance programs tailored to encourage small business growth and expansion. As the economy continues to recover and grow, it is essential that Congress send a message that affirms long-term stability in the programs the SBA provides to the small business community.

In the 50-year period since the establishment of the SBA, there have been many revisions and additions to the methods and organizational structure used by the SBA to respond to the evolving needs of small business. This bill builds upon those changes creating a stronger foundation for the SBA to deliver its programs.

Since 1953, nearly 20 million small business owners have received direct or indirect help from one of the SBA's lending or technical assistance programs, making the agency one of the government's most cost-effective instruments for economic development.

The SBA current loan portfolio of more than 200,000 loans, worth more than $45 billion, makes it the largest single supporter of small businesses in the country. Last year alone, lenders have made 83,912 loans to small businesses in the SBA's two major loan programs, with a total value of $16.5 billion.

Moreover, the SBA Small Business Investment Company program's current portfolio of more than 16,900 financings with an initial investment amount of $17.2 billion makes it the largest single equity-type backer of U.S. businesses in the Nation. Since 1958 the venture capital program has put more than $42.3 billion into the hands of small business owners, and this year it has produced investments of more than $2.6 billion in small businesses.

The SBA estimates that in the last fiscal year its loan and venture capital programs have provided small businesses with $19.7 billion in various forms of financing, enabling small businesses to create or retain 716,144 jobs.

In my home state of Maine alone, almost 2,500 SBA loans have been provided since 1999, for a total of over $288 million, to small businesses that might not have qualified for loans through alternative channels. These loans are critical to providing capital to small businesses in every state and now more will be available to them for supplying this country with additional production, jobs, and income.

Through a great deal of hard work, many aspects of S.1375 that improved the SBA's largest loan program—the 7(a) program—were included in the omnibus package. To give you some examples, a National Preferred Lenders Pilot Program will be created, in which lenders already operating as Preferred Lenders in the 7(a) program in many districts can be granted Preferred Lender status on a nation-wide rather than district-by-district basis, thereby greatly increasing the program's efficiency. The maximum size of 7(a) Express loans have been increased from $250,000 to $350,000 and the maximum 7(a) guarantee is increased from $1 million to $1.5 million.

The SBA 504 loan program, which supports real estate and machinery investments, will also benefit. The maximum 504 guarantee, previously $1 million, is increased to $1.5 million for a general 504 guarantee and $4 million for a guarantee that supports a manufacturing project. For a loan that supports one of the nine ''public-policy'' goals named in the Small Business Investment Act of 1958, the maximum guarantee is increased from $1.3 million to $2 million.

Let me share some additional highlights of the provisions that are included.

As Chair of the Senate Committee on Small Business and Entrepreneurship, co-chair of the Senate Task Force on Manufacturing, and Senator from a state with a rich manufacturing history, I am keenly aware that our nation's economy and security depends on our industrial base.

Unfortunately, manufacturing jobs in the United States have declined since their historic peak in 1979 and that loss has accelerated in recent years. Small business manufacturers constitute over 98 percent of our nation's manufacturing enterprises. It is impossible to overstate the role of small manufacturers within the overall manufacturing industry and our nation's economy.

The bill includes a section that derives from S. 1977, the Small Manufacturers Assistance, Recovery, and Trade, SMART Act, which I and original cosponsor Senator GEORGE V. VOINOVICH introduced on November 25, 2003. Specifically, it establishes a Small Business Manufacturing Task Force within the Small Business Administration, charged with ensuring that the administration is properly addressing the particular needs of small manufacturers.

I am also particularly pleased that the Omnibus bill contains $109 million for the Manufacturing Extension Partnership, a cost-effective, public-private partnership that helps small and medium-sized American manufacturers modernize to compete in the demanding global marketplace.

The MEP's funding had been drastically reduced in 2004, dropping to $39.6 million from a previous level of $106 million. Those drastic cuts threatened to destroy the MEP program, which is relied upon by small manufacturers across our nation.

At a time when these manufacturers are facing an unprecedented level of competition from across the globe, it is vital that we continue to provide them the tools and resources that allow them to remain competitive and to

continue to provide well paying jobs to millions across our country.

For our veterans who give so much to our nation and who continue to take risks on the battlegrounds of the business world, the bill includes language that I originally included in S. 1375, extending the Advisory Committee on Veterans Affairs as a separate entity to continue its functions through September 30, 2006.

The Advisory Committee responsibilities include providing better assistance and support to veterans who are forming and expanding small businesses, and providing advice to Congress and the Small Business Administration on policy initiatives to promote veteran entrepreneurship.

With this legislation, Congress is also taking important steps towards fulfilling its promises to pry open the doors of public procurement for small businesses. Small entrepreneurs continue to face persistent barriers in accessing government prime contracts and subcontracts. Many of these barriers have been erected in the middle of the very programs designed to assist small entrepreneurs who are socio-economically disadvantaged or who do business in Historically Underutilized Business Zones. Therefore, it has been no surprise that the Federal Government has never come close to satisfying its statutory HUBZone prime contracting goals.

Among other items taken from my earlier SBA bill, S.2821, this bill expands the definition of HUBZone-eligible firms to promote inflow of capital to HUBZone areas, tap the potential of small agricultural cooperatives, and place tribally-owned HUBzone firms on equal footing with other participants. It also extends the HUBzone program to military base closure areas such as the former Loring Air Force Base and protects companies located in rural HUBZone areas like Aroostook County, ME, from losses of their HUBZone status due to area redesignations. Duplicative paperwork burdens imposed on 8(a) firms trying to do business with state and local governments are also being lifted.

Mr. President, I would also like to comment on the funding levels provided for the SBA in this bill. Since FY 2001, funding for the SBA has decreased by more than 32 percent, the largest decrease of any agency funded with discretionary spending. I understand the need to be particularly fiscally responsible this year, given the size of the deficit, but such a large cut to programs that focus on creating jobs is a mistake.

The funding included for the SBA Microloan program will provided entrepreneurs with a source of financing when no other options are available. With over $27 million in loan provided through this program last year, I am satisfied that the bill closely reflects my funding request.

I am pleased with the funding levels provided for the SBA technical assistance programs, especially the funding provided for the Women's Business Center program. During this Congress, I worked with the administration and the House of Representatives to pass legislation that would sustained funding for the most experienced centers.

With women-owned firms generating almost $2.5 trillion in revenues and employing more than 19 million workers, they are the fastest growing segment of today's economy. In my home state of Maine alone, more than 63,000 women-owned firms generate more than $9 billion in sales. The funding included in this bill for these centers ensures that there are resources available to continue creating success stories for America's women entrepreneurs.

I am deeply concerned that the final Omnibus bill did not reflect the Senate bill and include funding for the SBIR and STTR programs of $2 million and $250,000 respectively. These programs facilitated over $1.5 billion in government research and development grants to small businesses. Moreover, since the inception of the program in 1982, SBIR firms have produced more than 4,100 patents. Without the funding for these programs not only do our small businesses suffer but so does our nation. These programs capitalize on the small business sector's innovative potential. Technological innovation creates jobs, improves our way of life, and helps American companies maintain their competitive advantage.

I applaud America's small businesses that continue to rise to the challenge of keeping this country innovative and strong. Three to four million new business start-ups each year and 1 in 25 adult Americans accept the risks of starting a business. Today's small business owners are making plans for tomorrow, including decisions that will create approximately two-thirds of all net new jobs helping to sustain local communities, according to a recent National Federation of Independent Business survey.

Over the last 5 years the SBA's programs and services have helped create and retain over 6.2 million jobs. According to the SBA, the $65.5 billion awarded to small businesses in Federal prime and subcontracts in FY 2003 will create or retain close to 500,000 jobs. This bill should bring about similar or even greater results in the next few years.

Too much was at stake for small businesses, and the economy as a whole, to allow SBA reauthorization to languish. It was time for Congress to find essential agreement and fulfill its obligation to America's small businesses. Clearly, if we strove for anything less, we'd have failed to support the backbone of our economy, our hope for innovation and new technology, and our small firms that employ millions across the nation.

Again, I thank my colleagues who joined me in supporting this crucial legislation, thereby bolstering American small businesses and protecting Americans' dreams.

Mr. President, Division K of H.R. 4818, the Consolidated Appropriations Act for 2005, contains the Small Business Reauthorization and Manufacturing Assistance Act of 2004. Since the Act was incorporated directly into the Consolidated Appropriations Act for 2005, no committee report accompanies the legislation.

As Chair of the Senate Committee on Small Business and Entrepreneurship, I am submitting for insertion in the RECORD, the attached explanation of Division K. I would expect the administrator of the Small Business Administration, in implementing the provisions of this act, to accord the enclosed explanation the same weight in divining congressional intent that the administrator would give to language in a conference report. This expectation is particularly appropriate in this circumstance because the provisions were negotiated and agreed to in cooperation with my counterpart in the United States House of Representatives.

The Small Business Administration 50th Anniversary Reauthorization Act of 2003, S.1375, is a bill to reauthorize most programs at the SBA for Fiscal Years 2004, 2005, and 2006. Additionally, the bill makes changes to various existing programs and authorizes several new pilot initiatives. S.1375 was adopted by the Senate Committee on Small Business and Entrepreneurship by a unanimous vote of 19–0.

S. 1375 was the product of a series of hearings and roundtable discussions that the committee held in 2003 on a wide spectrum of issues and SBA programs.

The committee completed its series of hearings and roundtables on SBA reauthorization with a hearing on June 4, 2003, that included SBA Administrator Hector Barreto. This hearing provided an additional opportunity for the agency to respond to issues raised during the previous roundtable discussions, discuss its legislative package that was submitted to the Committee for review, and comment on the President's fiscal year 2004 budget submission. The hearing also examined a number of agency management issues including the SBA's efforts to obtain a clean audit opinion on financial statements, implementation of a loan monitoring system, and workforce transformation plans.

In addition to containing sections from the Small Business Administration 50th Anniversary Reauthorization Act of 2003, the Omnibus includes sections that derive from S. 1977, the Small Manufacturers Assistance, Recovery, and Trade (''SMART'') Act, offered by Senator SNOWE and original cosponsor Senator GEORGE V. VOINOVICH, introduced on November 25, 2003.

Examples of provisions from the SMART Act contained in the Omnibus are sections that increase manufacturers' access to capital, and a provision that creates a Small Business Manufacturing Task Force, within the SBA,

charged with ensuring that the SBA is properly addressing the particular needs of small manufacturers.

Throughout the hearings and roundtables, the Committee's objectives have been to single out the SBA programs that work well, identify the reasons for their superior performance, and apply those principles to programs that need improvement. The voluminous amount of information that the Committee collected through the hearings and roundtable discussions held this year and in the previous Congress as well as information received directly from small business stakeholders has contributed greatly to achieving that goal and the results are reflected in the bill.

While not all of the provisions of S.1375 are contained in Division K of H.R. 4818, I believe that by providing appropriate authorization levels, updating and improving SBA lending and technical assistance programs, and introducing new initiatives to assist America's 21st Century entrepreneurs, this bill will provide a sound foundation for the agency to begin its next 50 years of even greater service.

I ask unanimous consent that immediately following these remarks an explanatory statement describing the small business provisions of H.R. 4818 be printed in the CONGRESSIONAL RECORD.

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

STATEMENT DESCRIBING PROVISIONS OF DIVISION K OF H.R. 4818 FILED BY SENATOR OLYMPIA J. SNOWE

SECTION 101. EXPRESS LOANS

Section 7(a)(25)(B) authorizes the Administrator to create pilot loan programs. In exercising that authority, the Administrator created an ''Express Loan Pilot Program.'' The program authorizes lenders to use their own forms in submitting requests to the Administrator for the issuance of guarantees. Two significant restrictions are imposed by the ''Express Loan Pilot Program:'' the guarantee cannot exceed 50 percent of the loan and the maximum loan amount is $250,000.

Section 101 codifies, with a few significant differences, the provisions of Pub. L. No. 108–217, which addressed the Express Loan Program. The two most significant changes are the permanent authorization of the Express Loan Program by creating a new paragraph (31) in §7(a) of the Small Business Act and the statutory increase in the size of such loans to $350,000.

Section 101 defines an ''express lender'' as any lender authorized by the Administrator to participate in the Express Loan Program. Congress expects that the Administrator will establish by rule the standards needed to qualify as an Express Lender.

Section 101 defines an ''express loan'' as one in which the lender utilizes, to the maximum extent practicable, its own analyses of credit and forms. Congress fully expects that the conditions under which express loans are made will not vary significantly from those conditions that currently exist under the ''Express Loan Pilot Program.'' Nevertheless, Congress understands that the Administrator may wish to revise the standards and operating procedures associated with ''express loans.'' Nothing in the statutory language should be interpreted as prohibiting the Administrator from imposing these additional requirements that are otherwise consistent with the statutory language.

Section 101 codifies the existing concept of the Administrator's ''Express Loan Pilot Program.'' In other words, the ''Express Loan Program'' is one in which lenders utilize their own forms and get a guarantee of no more than 50 percent.

Section 101 restricts the program, including the increased loan amount of $350,000, to those lenders designated as express lenders by the Administrator. Designation as an express lender does not limit the lender to making express loans if the lender has been authorized to make other types of loans pursuant to §7(a) of the Small Business Act. Although a lender may only seek status as an express lender, this section was included to ensure that the Administrator not limit the ability of an express lender to seek other lending authority from the Administrator. Nor is the Administrator permitted to change its standards for designating an express lender in a manner that only authorizes the lender to make express loans. To the extent that the lending institution wishes to offer a full range of loan products authorized by §7(a) and is otherwise qualified to do so, the Administrator shall not restrict that ability on the lender's status as an express lender.

Section 101 prohibits the Administrator from revoking the designation of any lender as an express lender that was so designated at the time of enactment. This prohibition does not apply if the Administrator finds the express lender to have violated laws or regulations or the Administrator modifies the requirements for designation in a way that the express lender cannot meet those standards. Congress does not expect that the Administrator will impose new requirements for express lenders that prohibit them from making loans under other loan programs authorized by the Small Business Act for which they have approval from the Administrator.

Congress, at the request of the Small Business Administration, determined that it was appropriate to expand the size of ''express loans'' to $350,000. Any change in the size of an express loan now will require action by Congress.

Congress is concerned that the Administrator will take regulatory actions that unduly favor express lending over other types of lending authorized by §7(a) of the Small Business act. As such, Congress incorporated a provision prohibiting the Administrator from taking any action that would have the effect of requiring a lender to make an express loan rather than a conventional loan pursuant to §7(a). Any significant policy change in the operation of the lending programs authorized by §7(a) of the Small Business Act requires notification to the House and Senate Small Business Committees. Furthermore, the statutory language on notification goes beyond that which is required pursuant to §7(a)(24) of the Small Business Act.

SECTION 102. LOAN GUARANTEE FEES

Section 102 increases the loan guarantee amount to a maximum of $1.5 million. Given the fact that borrowers are getting an additional increment in loan guarantees, the sponsors determined that it would be appropriate to require an additional 0.25 percent fee for the amount of guarantee in excess of $1 million. Thus, on the amount of the guarantee between $1 million and $1.5 million, the upfront fee authorized pursuant to §7(a)(18) of the Small Business Act increases from 3.5 percent to 3.75 percent but only for that portion of the loan guarantee in excess of $1 million. This is consistent with typical commercial lending practices of charging fees that are commensurate with the lenders' exposure to risk.

Section 102 also raises the fee collected by the Administrator from banks of the unpaid balance of deferred participation loans. To avoid situations such as those that occurred at the end of calendar year 2003 in which the Administrator was required to drastically reduce lending and impose other restrictions on the program, Congress determined that it would be appropriate for the Administrator to have some discretion in setting the fee paid by lenders on the unpaid balance. The total amount of the fee cannot in any year, exceed 0.55 percent of the unpaid balance. Congress expects the Administrator to use this authority only when needed to drive the cost, as that term is defined in the Federal Credit Reform Act, of the loan program to zero, i.e., not need an appropriation. Any use of this discretion to raise the fee beyond the current level of 0.5 percent should trigger the notification provisions in §7(a)(24) of the Small Business Act. As a further oversight tool, Congress expects that the Administrator would satisfy any relevant committee's request for information on the utilization of this discretion.

Finally, Congress determined that the Administrator also be given the authority to lower fees charged to borrowers and lenders if the subsidy cost becomes negative, i.e., the fees will actually take in more money to the government than it costs to operate the §7(a) loan program. Congress adopted an approach that the Administrator, should it undertake a fee reduction, first consider reducing the fees set forth in clauses (i)–(iii) of subsection 7(a)(18)(A) and then reduce fees on lenders. As a further restriction on the discretion of the Small Business Administration, the fees that were charged to borrowers on the date of enactment of this conference report may not be raised. Congress adopted this language to ensure that any fee increases to borrowers beyond the statutory limits requires the action of Congress.

SECTION 103. INCREASE IN GUARANTEE AMOUNT IN INSTITUTION OF ASSOCIATED FEE

Access to capital is vital to the growth of small businesses. Particularly for manufacturers and high technology research and development businesses, typical amounts of capital available under the existing loan limits authorized by §7(a) of the Small Business Act often are inadequate. Given the importance of capital to grow small businesses, Congress determined that it would be appropriate to permanently increase the amount