Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

AMENDMENT NO. 4245

At the request of Mr. FEINGOLD, his name was added as a cosponsor of amendment No. 4245 proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

At the request of Mr. LUGAR, the names of the Senator from Georgia (Mr. CHAMBLISS), the Senator from Minnesota (Mr. COLEMAN), and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of amendment No. 4245 proposed to S. Con. Res. 70, supra.

At the request of Mr. BIDEN, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Maryland (Ms. MIKULSKI), the Senator from North Carolina (Mrs. DOLE), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Missouri (Mr. BOND), the Senator from Ohio (Mr. BROWN), the Senator from Louisiana (Mr. VITTER), the Senator from Maryland (Mr. CARDIN), the Senator from New York (Mrs. CLINTON), the Senator from California (Mrs. BOXER), the Senator from New York (Mr. SCHUMER), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Washington (Ms. CANTWELL), the Senator from Rhode Island (Mr. REED), and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of amendment No. 4245 proposed to S. Con. Res. 70, supra.

AMENDMENT NO. 4248

At the request of Mr. BARRASSO, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of amendment No. 4248 proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

AMENDMENT NO. 4251

At the request of Ms. CANTWELL, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of amendment No. 4251 intended to be proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

AMENDMENT NO. 4252

At the request of Mr. BROWN, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of amendment No. 4252 proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

AMENDMENT NO. 4254

At the request of Mr. DODD, the names of the Senator from Minnesota (Ms. KLOBUCHAR), the Senator from Illinois (Mr. OBAMA), the Senator from New Jersey (Mr. MENENDEZ), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Illinois (Mr. DURBIN), and the Senator from New York (Mrs. CLINTON) were added as cosponsors of amendment No. 4254 proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

AMENDMENT NO. 4260

At the request of Mrs. CLINTON, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Ohio (Mr. BROWN), the Senator from Illinois (Mr. OBAMA), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of amendment No. 4260 intended to be proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

AMENDMENT NO. 4263

At the request of Mrs. BOXER, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 4263 intended to be proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

AMENDMENT NO. 4266

At the request of Ms. SNOWE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of amendment No. 4266 intended to be proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

AMENDMENT NO. 4267

At the request of Ms. SNOWE, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of amendment No. 4267 intended to be proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

AMENDMENT NO. 4269

At the request of Mr. THUNE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of amendment No. 4269 proposed to S. Con. Res. 70, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009 and including the appropriate budgetary levels for fiscal years 2008 and 2010 through 2013.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. MURRAY:

S. 2755. A bill to provide funding for summer youth jobs; to the Committee on Health, Education, Labor, and Pensions.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2755

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Summer Jobs Stimulus Act of 2008''.

SEC. 2. SUMMER YOUTH JOBS.

(a) FINDINGS.—Congress finds that—

(1) a temporary $1,000,000,000 investment in summer employment for youth, through the summer youth jobs program supported under this section, will create up to 1,000,000 jobs for economically disadvantaged youth and stimulate local economies;

(2) research from Northwestern University has shown that every $1 a youth earns has an accelerator effect of $3 on the local economy;

(3) there is a serious and growing need for employment opportunities for economically disadvantaged youth, as demonstrated by statistics from the Bureau of Labor Statistics stating that, in December 2007—

(A) the unemployment rate increased to 5 percent, as compared to 4.4 percent in December 2006;

(B) the unemployment rate for 16- to 19-year-olds rose to 17 percent, as compared to 13 percent in December 2006; and

(C) the unemployment rate for African-American 16- to 19-year-olds increased 5 percent in 1 month, jumping to 34.7 percent, as compared to 20 percent in December 2006;

(4) summer youth jobs help supplement the income of families living in poverty;

(5) summer youth jobs provide valuable work experience to economically disadvantaged youth;

(6) often, the summer jobs provided through the program are an economically disadvantaged youth's introduction to the world of work;

(7) according to the Center for Labor Market Studies at Northeastern University, early work experience is a very powerful predictor of success and earnings in the labor market, and early work experiences raises earnings over a lifetime by 10 to 20 percent;

(8) participation in a summer youth jobs program can contribute to a reduction in criminal and high-risk behavior for youth; and

(9)(A) summer youth job programs benefit both youth and communities when designed around principles that promote mutually beneficial programs;

(B) youth benefit from summer youth jobs that provide them with work readiness skills and that help them make the connection between responsibility on the job and success in adulthood; and

(C) communities benefit when youth are engaged productively during the summer, providing much-needed services that meet real community needs.

(b) APPROPRIATIONS.—Out of any money in the Treasury not otherwise appropriated, and in addition to any funds appropriated under any provision of Federal law other than this section, there is appropriated to the Secretary of Labor for youth activities under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), $1,000,000,000, which shall be available for the period of April 1, 2008 through December 31, 2008, under the conditions described in subsection (c).

(c) CONDITIONS.—

(1) USE OF FUNDS.—The funds appropriated under subsection (b) shall be used for summer employment opportunities referred to in section 129(c)(2)(C) of such Act (29 U.S.C. 2854(c)(2)(C)).

(2) LIMITATION.—Such funds shall be distributed in accordance with sections 127 and 128 of such Act (29 U.S.C. 2852, 2853), except that no portion of such funds shall be reserved to carry out 128(a) or 169 of such Act (29 U.S.C. 2853(a), 2914).

(3) MEASURE OF EFFECTIVENESS.—The effectiveness of the activities carried out with such funds shall be measured, under section 136 of such Act (29 U.S.C. 2871), only with performance measures based on the core indicators of performance described in section 136(b)(2)(A)(ii)(I) of such Act (29 U.S.C. 2871(b)(2)(A)(ii)(I)).

By Mr. BIDEN (for himself, Mr. HATCH, and Mr. SPECTER):

S. 2756. A bill to amend the National Child Protection Act of 1993 to establish a permanent background check system; to the Committee on Health, Education, Labor, and Pensions.

Mr. BIDEN. Mr. President, I rise today with my colleagues Senator HATCH and Senator SPECTER to introduce the Child Protection Improvements Act of 2008. This bill will expand and make permanent the national child safety pilot program that we passed as part of the PROTECT Act back in 2003. This bill is, in my view, an absolutely essential step towards developing a comprehensive approach to protect our Nation's children.

Human service organizations rely on volunteers and employees to provide services and care to children. These individuals coach soccer games, mentor young people, run youth camps, and much more. Approximately 61 million adults currently volunteer—with 27 percent dedicating their volunteer service to education and youth programs. By volunteering, they necessarily gain very close, often unsupervised access to our children. Of course, the vast majority of these people have the best interest of our children at heart—and we need as many volunteers as we can get. But, at the same time, we have to understand that bad people will take any step they can to gain access to children and many attempt to do this by volunteering.

Congress has previously attempted to ensure that States make FBI criminal history record checks available to organizations seeking to screen employees and volunteers who work with children, through the National Child Protection Act of 1993 and the Volunteers for Children Act. However, according to a report from the Attorney General, these laws ''did not have the intended impact of broadening the availability of checks.'' A 2007 survey conducted by MENTOR/National Mentoring Partnership found that only 18 States allowed youth mentoring organizations to access nationwide Federal Bureau of Investigation background searches. And, even when states do provide access to background checks, it can be expensive and time consuming.

With the PROTECT Act pilot we decided to give some groups a direct line towards obtaining a national background check from the FBI and obtaining a fitness determination by the National Center for Missing and Exploited Children to see whether the applicant could present a potential threat to children. Thanks to the hard work and commitment of NCMEC, the FBI, MENTOR/National Mentoring Partnership, and others this pilot program has proven incredibly effective. During the course of the pilot, we conducted roughly 37,000 background checks. Of these checks, 6.1 percent of prospective volunteers were found to have a criminal record of concern—including very serious offenses like sexual abuse of minors, assaults, murder, and serious drug offenses. In all, this represents over 2,200 dangerous people we prevented from working as volunteers with children. In addition, over 40 percent of the individuals with criminal records had committed an offense in a state other than where they were applying to volunteer, meaning that a state-only search would not have found relevant criminal records. In my view, this speaks to the urgent need of expanding this pilot to more groups and towards making the program permanent.

Despite these successes, the pilot was limited in several respects. The pilot was limited in scope with only a few youth-serving entities able to participate, and irregularities with respect to the annual appropriations process made it extremely difficult to operate the program to its fullest extent. With the legislation, we are introducing today, we build upon the lessons learned by taking the following steps: make the program permanent, which will help ensure that long-term investments are made to make the program effective and inexpensive; establish an Applicant Processing Center, APC, to assist youth serving organizations with the administrative tasks related to accessing the system, such as obtaining a fingerprint and handling billing with the FBI; and permanently establish and upgrade the fitness determination process at the National Center for Missing and Exploited Children.

In addition, we authorize the collection of a small surcharge to pay the FBI fee and offset the expenses incurred by National Center for Missing and Exploited Children and the Applicant Processing Center. With literally millions of volunteers working with our Nation's youth every year, it is imperative to provide a mechanism to allow more youth-serving organizations access and ensure a steady stream of resources to allow the program to grow toward the goal of protecting more children. This bill will do that.

Before closing, I want to touch on fee for service component which is added to this bill. Of course, the goal has always been that the checks have to be fast, inexpensive, and accurate for these checks to be suitable for nonprofit organizations. By adding a small surcharge to the fee the FBI charges, we maintain that goal while expanding access. The bottom line is this—youth-serving organizations have told us that the ability to consistently obtain background checks and fitness determinations is critical and they will pay a little more to have access. Because Federal resources are simply not sufficient to provide wide access, and because the ebb and flow of the appropriations process creates instability with respect to how many checks can be completed, we felt that a small surcharge was the right approach.

Even with the surcharge, we still keep the cost very low. The bill calls for a fee no greater than $25 or the actual costs of preparing the application, running the background check by the FBI, and making the fitness determination by NCMEC for nonprofits. The applicant processing center created in this bill will collect this fee and make sure that all the costs are offset. And the goal is that this fee will offset all of the costs so that we can grow a system that is available to a wide range of entities that work with children. As of today, the American Camp Association, the Afterschool Alliance, the America's Promise Alliance, Big Brothers Big Sisters of America, Boys and Girls Clubs of America, Communities In Schools, Inc., First Focus, MENTOR/National Mentoring Partnership, and YMCA of the USA all agree with this approach.

In addition, the bill authorizes $5 million in 2009 for startup costs and to develop new processes and technologies to automate and streamline the functions to keep costs down. And, while it's not a part of this legislation, I hope that we can get some of our great technology companies to help us with this effort by possibly donating some of their time, expertise, and ingenuity towards helping us automate the process—especially with the fitness determination process at the National Center for Missing and Exploited Children which is a time consuming, labor-intensive process involving the manual review of criminal rap sheets. We formed a similar public-private partnership when we established the National Domestic Violence Hotline, and I hope we will be able to replicate that success here. Once we get this bill passed, I will be reaching out to some of our best technology companies to see if they can help us ensure that these checks remain inexpensive and

available for as many youth-serving groups as possible.

I would once again like to thank my colleagues Senator HATCH's and Senator SPECTER's work on crafting this bill. We proved that we can help protect children at a low cost with the pilot program, and I believe that this bill will help expand access to a greater number of groups so that we can grow that number of protected children exponentially. To me, this is exactly the kind of service that the government owes to its people, and I look forward to its prompt passage before the expiration of the pilot program on July 30th, later this summer.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2756

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Protection Improvements Act of 2008''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) In 2006, 61,200,000 adults (a total of 26.7 percent of the population) contributed a total of 8,100,000,000 hours of volunteer service. Of those who volunteer, 27 percent dedicate their service to education or youth programs, or a total of 16,500,000 adults.

(2) Assuming recent incarceration rates remain unchanged, an estimated 6.6 percent of individuals in the United States will serve time in prison for a crime during their lifetime. The Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation maintains fingerprints and criminal histories on more than 47,000,000 individuals, many of whom have been arrested or convicted multiple times.

(3) A study released in 2002, found that, of individuals released from prison in 15 States in 1994, an estimated 67.5 percent were rearrested for a felony or serious misdemeanor within 3 years. Three-quarters of those new arrests resulted in convictions or a new prison sentence.

(4) Given the large number of individuals with criminal records and the vulnerability of the population they work with, human service organizations that work with children need an effective and reliable means of obtaining a complete criminal history in order to determine the suitability of a potential volunteer or employee.

(5) The large majority of Americans (88 percent) favor granting youth-serving organizations access to conviction records for screening volunteers and 59 percent favored allowing youth-serving organizations to consider arrest records when screening volunteers. This was the only use for which a majority of those surveyed favored granting access to arrest records.

(6) Congress has previously attempted to ensure that States make Federal Bureau of Investigation criminal history record checks available to organizations seeking to screen employees and volunteers who work with children, the elderly, and individuals with disabilities, through the National Child Protection Act of 1993 (42 U.S.C. 5119 et seq.) and the Volunteers for Children Act (Public Law 105–251; 112 Stat. 1885). However, according to a June 2006 report from the Attorney General, these laws ''did not have the intended impact of broadening the availability of NCPA checks.''. A 2007 survey conducted by MENTOR/National Mentoring Partnership found that only 18 States allowed youth mentoring organizations to access nationwide Federal Bureau of Investigation background searches.

(7) Even when accessible, the cost of a criminal background check can be prohibitively expensive, ranging from $5 to $75 for a State fingerprint check, plus the Federal Bureau of Investigation fee, which ranges between $16 to $24, for a total of between $21 and $99 for each volunteer or employee.

(8) Delays in processing such checks can also limit their utility. While the Federal Bureau of Investigation processes all civil fingerprint requests in less than 24 hours, State response times vary widely, and can take as long as 42 days.

(9) The Child Safety Pilot Program under section 108 of the PROTECT Act (42 U.S.C. 5119a note) revealed the importance of performing fingerprint-based Federal Bureau of Investigation criminal history record checks. Of 29,000 background checks performed through the pilot as of March 2007, 6.4 percent of volunteers were found to have a criminal record of concern, including very serious offenses such as sexual abuse of minors, assault, child cruelty, murder, and serious drug offenses.

(10) In an analysis performed on the volunteers screened in the first 18 months of the Child Safety Pilot Program, it was found that over 25 percent of the individuals with criminal records had committed an offense in a State other than the State in which they were applying to volunteer, meaning that a State-only search would not have found relevant criminal results. In addition, even though volunteers knew a background check was being performed, over 50 percent of the individuals found to have a criminal record falsely indicated on their application form that they did not have a criminal record.

(11) The Child Safety Pilot Program also demonstrates that timely and affordable background checks are possible, as background checks under that program are completed within 3 to 5 business days at a cost of $18.

SEC. 3. BACKGROUND CHECKS.

The National Child Protection Act of 1993 (42 U.S.C. 5119 et seq.) is amended—

(1) by redesignating section 5 as section 6; and

(2) by inserting after section 4 the following:

''SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS FOR CHILD-SERVING ORGANIZATIONS.

''(a) DEFINITIONS.—In this section—

''(1) the term 'applicant processing center' means the applicant processing center established by the Attorney General under subsection (b)(1);

''(2) the term 'child' means an individual who is less than 18 years of age;

''(3) the term 'covered entity' means a business or organization, whether public, private, for-profit, nonprofit, or voluntary that provides care, care placement, supervision, treatment, education, training, instruction, or recreation to children, including a business or organization that licenses, certifies, or coordinates individuals or organizations to provide care, care placement, supervision, treatment, education, training, instruction or recreation to children;

''(4) the term 'covered individual' means an individual—

''(A) who has, seeks to have, or may have unsupervised access to a child served by a covered entity; and

''(B) who—

''(i) is employed by or volunteers with, or seeks to be employed by or volunteer with, a covered entity; or

''(ii) owns or operates, or seeks to own or operate, a covered entity;

''(5) the term 'fitness determination program' means the fitness determination program established under subsection (b)(2);

''(6) the term 'identification document' has the meaning given that term in section 1028 of title 18, United States Code;

''(7) the term 'participating entity' means a covered entity that is approved under subsection (f) to receive nationwide background checks from the applicant processing center and to participate in the fitness determination program;

''(8) the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau; and

''(9) the term 'State authorized agency' means a division or office of a State designated by that State to report, receive, or disseminate criminal history information.

''(b) ESTABLISHMENT OF PROGRAM.—Not later than 90 days after the date of enactment of the Child Protection Improvements Act of 2008, the Attorney General shall—

''(1) establish within the Federal Government or through an agreement with a nonprofit entity an applicant processing center; and

''(2) enter into an agreement with the National Center for Missing and Exploited Children, under which the National Center for Missing and Exploited Children shall establish a fitness determination program.

''(c) APPLICANT PROCESSING CENTER.—

''(1) PURPOSE.—The purpose of the applicant processing center is to streamline the process of obtaining nationwide background checks, provide effective customer service, and facilitate widespread access to nationwide background checks by participating entities.

''(2) DUTIES.—The applicant processing center shall—

''(A) provide information to covered entities on the requirements to become a participating entity;

''(B) provide participating entities with access to nationwide background checks on covered individuals;

''(C) receive paper and electronic requests for nationwide background checks on covered individuals from participating entities;

''(D) serve as a national resource center to provide guidance and assistance to participating entities on how to submit requests for nationwide background checks, how to interpret criminal history records, how to obtain State criminal background checks, and other related information;

''(E) to the extent practicable, negotiate an agreement with each State authorized agency under which—

''(i) that State authorized agency shall conduct a State criminal background check within the time periods specified in subsection (e) in response to a request from the applicant processing center and provide criminal history records to the National Center for Missing and Exploited Children; and

''(ii) a participating entity may elect to obtain a State background check, in addition to a nationwide background check, through 1 unified request to the applicant processing center;

''(F) convert all paper fingerprint cards into an electronic form and securely transmit all fingerprints electronically to the national criminal history background check

system and, if appropriate, the State authorized agencies;

''(G) collect a fee to conduct the nationwide background check, and, if appropriate, a State criminal background check, and remit fees to the National Center for Missing and Exploited Children, the Federal Bureau of Investigation, and the State authorized agencies, as appropriate;

''(H) convey the results of the fitness determination to the participating entity that submitted the request for a nationwide background check; and

''(I) coordinate with the Federal Bureau of Investigation, participating State authorized agencies, and the National Center for Missing and Exploited Children to ensure that background check requests are being completed within the time periods specified in subsection (e).

''(3) REQUESTS.—A request for a nationwide background check by a participating entity shall include—

''(A) the fingerprints of the covered individual, in paper or electronic form;

''(B) a photocopy of a valid identification document; and

''(C) a statement completed and signed by the covered individual that—

''(i) sets out the covered individual's name, address, and date of birth, as those items of information appear on a valid identification document;

''(ii) states whether the covered individual has a criminal record, and, if so, provides the particulars of such criminal record;

''(iii) notifies the covered individual that the Attorney General and, if appropriate, a State authorized agency may perform a criminal history background check and that the signature of the covered individual on the statement constitutes an acknowledgment that such a check may be conducted;

''(iv) notifies the covered individual that prior to and after the completion of the background check, the participating entity may choose to deny the covered individual access to children; and

''(v) notifies the covered individual of the right of the covered individual to correct an erroneous record of the Attorney General and, if appropriate, the State authorized agency.

''(4) FEES.—

''(A) IN GENERAL.—The applicant processing center may collect a fee to defray the costs of carrying out its duties and the duties of National Center for Missing and Exploited Children under this section—

''(i) for a nationwide background check and fitness determination, in an amount not to exceed the lesser of—

''(I) the actual cost to the applicant processing center and the National Center for Missing and Exploited Children of conducting a nationwide background check and fitness determination under this section; or

''(II)(aa) $25 for a participating entity that is a nonprofit entity; or

''(bb) $40 for any other participating entity; and

''(ii) for a State criminal background check described in paragraph (2)(E), in the amount specified in the agreement with the applicable State authorized agency, not to exceed $18.

''(B) REDUCED FEES.—In determining the amount of the fees to be collected under subparagraph (A), the applicant processing center—

''(i) shall, to the extent possible, discount such fees for participating entities that are nonprofit entities; and

''(ii) may use fees paid by participating entities that are not nonprofit entities to reduce the fees to be paid by participating entities that are nonprofit entities.

''(C) PROHIBITION ON FEES.—

''(i) IN GENERAL.—A participating entity may not charge another entity or individual a surcharge to access a background check conducted under this section.

''(ii) VIOLATION.—The Attorney General shall bar any participating entity that the Attorney General determines violated clause (i) from submitting background checks under this section.

''(d) FITNESS DETERMINATION PROGRAM.—

''(1) PURPOSE.—The purpose of the fitness determination program is to provide participating entities with reliable and accurate information regarding whether a covered individual has been convicted of, or is under pending arrest or indictment for, a crime that bears upon the fitness of the covered individual to have responsibility for the safety and well-being of the children in their care.

''(2) REQUIREMENTS OF FITNESS DETERMINATION PROGRAM.—As part of operating the fitness determination program, the National Center for Missing and Exploited Children shall—

''(A) establish procedures to securely receive criminal background records from the Federal Bureau of Investigation and, if appropriate, State authorized agencies;

''(B) make determinations regarding whether the criminal history record information received in response to a criminal history background check conducted under this section indicate that the covered individual has a criminal history record that may render the covered individual unfit to provide care to children, based on the criteria described in paragraph (3);

''(C) convey a fitness determination to the applicant processing center;

''(D) specify the source of the criminal history information upon which a fitness determination is based; and

''(E) work with the applicant processing center and the Federal Bureau of Investigation to develop procedures and processes to ensure that criminal history background check requests are being completed within the time periods specified in subsection (e).

''(3) CRITERIA.—

''(A) IN GENERAL.—Subject to subparagraph (B), the fitness determination program shall use the criteria relating to when criminal history record information indicates that an individual has a criminal history record that may render the individual unfit to provide care to children that were established for the Child Safety Pilot Program under section 108(a)(3) of the PROTECT Act (42 U.S.C. 5119a note).

''(B) REVIEW.—The Attorney General and the National Center for Missing and Exploited Children, in coordination with national organizations representing a range of covered entities, shall review the criteria described in subparagraph (A) and make any changes needed to use such criteria in the fitness determination program.

''(e) TIMING.—

''(1) IN GENERAL.—Criminal background checks shall be completed not later than 10 business days after the date that a request for a national background check is received by the applicant processing center. The applicant processing center shall work with the National Center for Missing and Exploited Children and the Federal Bureau of Investigation to ensure that the time limits under this subsection are being achieved.

''(2) APPLICATION PROCESSING.—The applicant processing center shall electronically submit a national background check request to the national criminal history background check system and, if appropriate, the participating State authorized agency not later than 3 business days after the date that a request for a national background check is received by the applicant processing center.

''(3) CONDUCT OF BACKGROUND CHECKS.—The Federal Bureau of Investigation and, if appropriate, a State authorized agency shall provide criminal history records information to the National Center for Missing and Exploited Children not later than 3 business days after the date that the Federal Bureau of Investigation or State authorized agency, as the case may be, receives a request for a nationwide background check from the applicant processing center.

''(4) FITNESS DETERMINATIONS.—The National Center for Missing and Exploited Children shall convey a fitness determination to a participating entity and the applicant processing center not later than 4 business days after the date that the National Center for Missing and Exploited Children has received criminal history records from the Federal Bureau of Investigation and, if appropriate, each applicable State authorized agency.

''(f) PARTICIPATION IN PROGRAM.—

''(1) IN GENERAL.—The applicant processing center shall determine whether an entity is a covered entity and whether that covered entity should be approved as a participating entity, based on the consultation conducted under paragraph (2).

''(2) CONSULTATION.—In determining how many covered entities to approve as participating entities, the applicant processing center shall consult quarterly with the Federal Bureau of Investigation and the National Center for Missing and Exploited Children to determine the volume of requests for fitness determinations that can be completed, based on the capacity of the applicant processing center and the fitness determination program, the availability of resources, and the demonstrated need for such determinations in order to protect children.

''(3) PREFERENCE FOR NONPROFIT ORGANIZATIONS.—In determining whether a covered entity should be approved as a participating entity under paragraph (1), the applicant processing center shall give preference to any organization participating in the Child Safety Pilot Program under section 108(a)(3) of the PROTECT Act (42 U.S.C. 5119a note) on the date of enactment of the Child Protection Improvements Act of 2008 and to any other nonprofit organizations.

''(g) RIGHTS OF COVERED INDIVIDUALS.—

''(1) IN GENERAL.—A covered individual who is the subject of a nationwide background check under this section may contact the Federal Bureau of Investigation and, if appropriate, a State authorized agency to—

''(A) request that the full criminal history report of that covered individual be provided to that covered individual or the applicable participating entity not later than 10 business days after the date of that request; and

''(B) challenge the accuracy and completeness of the criminal history record information in the criminal history report.

''(2) RESOLUTION OF CHALLENGES.—The Federal Bureau of Investigation and, if appropriate, a State authorized agency shall promptly make a determination regarding the accuracy and completeness of any criminal history record information challenged under paragraph (1)(B).

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Attorney General $5,000,000 for fiscal year 2008, to—

''(A) establish and carry out the duties of the applicant processing center established under this section;

''(B) establish and carry out the fitness determination program; and

''(C) purse technologies and procedures to streamline and automate processes to enhance cost efficiency.

''(2) FITNESS DETERMINATIONS.—There are authorized to be appropriated to the Attorney General to carry out the agreement under this section with the National Center for Missing and Exploited Children $1,000,000 for each of fiscal years 2009 through 2013 to support the fitness determination program and so that fees for nonprofit organizations under that program are as low as possible.

''(3) SENSE OF THE SENATE.—It is the sense of the Senate that in fiscal year 2009, and each fiscal year thereafter, the fees collected by the applicant processing center should be sufficient to carry out the duties of the applicant processing center under this section and to help support the fitness determination program.

''(i) REPORT TO CONGRESS.—The Attorney General shall, on an annual basis, submit to Congress a report on the participating entities, the number of covered individuals submitting applications under this section, and the data on the number and types of fitness determinations issued under this section.

''(j) LIMITATION ON LIABILITY.—

''(1) IN GENERAL.—A participating entity shall not be liable in an action for damages solely for failure to conduct a criminal background check on a covered individual, nor shall a State or political subdivision thereof nor any agency, officer, or employee thereof, be liable in an action for damages for the failure of a participating entity (other than itself) to take action adverse to a covered individual who was the subject of a background check.

''(2) RELIANCE.—The applicant processing center or a participating entity that reasonably relies on a fitness determination or criminal history record information received in response to a background check under this section shall not be liable in an action for damages based on the inaccuracy or incompleteness of that information.

''(3) NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the National Center for Missing and Exploited Children, including a director, officer, employee, or agent of the National Center for Missing and Exploited Children, shall not be liable in an action for damages relating to the performance of the responsibilities and functions of the National Center for Missing and Exploited Children under this section.

''(B) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Subparagraph (A) shall not apply in an action if the National Center for Missing and Exploited Children, or a director, officer, employee, or agent of the National Center for Missing and Exploited Children, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this section.

''(C) ORDINARY BUSINESS ACTIVITIES.—Subparagraph (A) shall not apply to an act or omission relating to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.''.

SEC. 4. EXTENSION OF CHILD SAFETY PILOT.

Section 108(a)(3)(A) of the PROTECT Act (42 U.S.C. 5119a note) is amended—

(1) by striking ''60-month''; and

(2) by adding at the end the following: ''The Child Safety Pilot Program under this paragraph shall terminate on the date that the program for national criminal history background checks for child-serving organizations established under the Child Protection Improvements Act of 2008 is operating and able to enroll any organization using the Child Safety Pilot Program.''.

By Mr. DODD (for himself, Mr. LIEBERMAN, Mr. DURBIN, and Mr. KERRY):

S. 2759. A bill to provide for Kindergarten Plus programs; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today to introduce legislation to enhance opportunities for low-income children entering school. Today, I am introducing the Sandy Feldman Kindergarten Plus Act of 2008.

The Kindergarten Plus Act will provide children below 185 percent of the poverty line with additional time in school during the summer before, and the summer after, their traditional kindergarten school year to ensure that they enter school ready to succeed.

Too many low-income children enter school unprepared because they have not had access to educational resources such as books and other tools for learning. Arriving at school already behind, many of these children find it difficult, if not impossible, to catch up academically to their more affluent peers.

When we consider the achievement gap between low-income children and their wealthier peers, it immediately becomes clear that we must do a better job of preparing these children for school. To prepare them for success, we need to expose them to classroom practices earlier, introduce them to critical educational concepts, and familiarize them with school activities such as story or circle time. Ultimately, we need to provide these students with a solid foundation that allows them to enter school with the skills necessary to become strong students.

Only 39 percent of low-income children, compared to about 85 percent of high-income children, can recognize letters of the alphabet upon arrival in kindergarten. Moreover, low-income children often have a more limited vocabulary. By the time they are in first grade, children in low-income families have, on average, 5,000 words in their vocabulary. In contrast, children from more affluent families enter school with vocabularies of about 20,000 words. These startling discrepancies should tell us that more needs to be done to help all children enter school with an equal opportunity for success. Kindergarten Plus strives to provide these opportunities and to lessen the achievement gap by providing low-income children more support and additional exposure to high-quality schooling.

This legislation was named after Sandy Feldman. As many of you know, Sandy was a tireless advocate for children and public education. Her commitment to social justice and her focus on early childhood education led her to develop the concept for this legislation, and it was Sandy who spent countless hours developing the details to ensure this would be a high-quality initiative. I was honored to have worked with Sandy in developing the initial legislation and am proud that this bill bears her name.

I am joined today in introducing this legislation by my colleagues Senators LIEBERMAN and DURBIN. This bill is supported by the American Federation of Teachers, National Education Association, Council of Great City Schools, the Children's Defense Fund, Service Employees International Union, American Federation of State, County and Municipal Employees, National Association of Child Care Resource and Referral Agencies, and Easter Seals. I urge my colleagues to join my effort and cosponsor this legislation. I encourage them to help launch low-income children on the path to school success.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2759

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Kindergarten Plus Act of 2008''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Kindergarten has proven to be a beneficial experience for children, putting children on a path that positively influences their learning and development in later school years.

(2) Kindergarten and the years leading up to kindergarten are critical in preparing children to succeed in elementary school, especially if the children are from low-income families or have other risks of difficulty in school.

(3) Disadvantaged children, on average, lag behind other children in literacy, numeracy, and social skills, even before formal schooling begins.

(4) For many children entering kindergarten, the achievement gap between children from low-income households compared to children from high-income households is already evident.

(5) Eighty-five percent of beginning kindergartners in the highest socioeconomic group, compared to 39 percent in the lowest socioeconomic group, can recognize letters of the alphabet. Similarly, 98 percent of beginning kindergartners in the highest socioeconomic group, compared to 84 percent of their peers in the lowest socioeconomic group, can recognize numbers and shapes.

(6) Once disadvantaged children are in school, they learn at the same rate as other children. Therefore, providing disadvantaged children with additional time in kindergarten, in the summer before such children ordinarily enter kindergarten and in the summer before first grade, will help schools close achievement gaps and accelerate the academic progress of their disadvantaged students.

(7) High quality, extended-year kindergarten that provides children with enriched learning experiences is an important factor in helping to close achievement gaps, rather than having the gaps continue to widen.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELIGIBLE STUDENT.—The term ''eligible student'' means a child who—

(A) is a 5-year old, or will be eligible to attend kindergarten at the beginning of the next school year;

(B) comes from a family with an income at or below 185 percent of the poverty line; and

(C) is not already served by a high-quality program in the summer before or the summer after the child enters kindergarten.

(2) KINDERGARTEN PLUS.—The term ''Kindergarten Plus'' means a voluntary full day of kindergarten, during the summer before and during the summer after, the traditional kindergarten school year (as determined by the State).

(3) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(4) PARENT.—The term ''parent'' includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

(5) PARENTAL INVOLVEMENT.—The term ''parental involvement'' means the participation of parents in regular, 2-way, and meaningful communication with school personnel involving student academic learning and other school activities, including ensuring that parents—

(A) play an integral role in assisting their child's learning;

(B) are encouraged to be actively involved in their child's education at school; and

(C) are full partners in their child's education and are included, as appropriate, in decisionmaking and on advisory committees to assist in the education of their child.

(6) POVERTY LINE.—The term ''poverty line'' means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved.

(7) ELIGIBLE PROVIDER.—The term ''eligible provider'' means a local educational agency or a private not-for-profit agency or organization, with a demonstrated record in the delivery of early childhood education services to preschool-age children, that provides high-quality early learning and development experiences that—

(A) are aligned with the expectations for what children should know and be able to do when the children enter kindergarten and grade 1, as established by the State educational agency; or

(B) in the case of an entity that is not a local educational agency and that serves children who have not entered kindergarten, meet the performance standards and performance measures described in subparagraphs (A) and (B) of subsection (a)(1), and subsection (b), of section 641A of the Head Start Act (42 U.S.C. 9836a) or the prekindergarten standards of the State where the entity is located.

(8) SCHOOL READINESS.—The term ''school readiness'' means the cognitive, social, emotional, approaches to learning, and physical development of a child, including early literacy and early mathematics skills, that prepares the child to learn and succeed in elementary school.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(10) STATE EDUCATIONAL AGENCY.—The term ''State educational agency'' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

SEC. 4. GRANTS TO STATE EDUCATIONAL AGENCIES AUTHORIZED.

(a) IN GENERAL.—The Secretary is authorized to award grants, on a competitive basis, to State educational agencies to enable the State educational agencies to provide Kindergarten Plus within the State.

(b) SUFFICIENT SIZE.—To the extent possible, the Secretary shall ensure that each grant awarded under this section is of sufficient size to enable the State educational agency receiving the grant to provide Kindergarten Plus to all eligible students served by the local educational agencies within the State with the highest concentrations of eligible students.

(c) MINIMUM AMOUNT.—The Secretary shall not award a grant to a State educational agency under this section in an amount that is less than $500,000.

(d) STATE USE OF FUNDS.—A State educational agency shall use—

(1) not more than 3 percent of the grant funds received under this Act for administration of the Kindergarten Plus programs supported under this Act;

(2) not more than 5 percent of the grant funds received under this Act to develop professional development activities and curricula for teachers and staff of Kindergarten Plus programs in order to develop a continuum of developmentally appropriate curricula and practices for preschool, kindergarten, and grade 1 that ensures—

(A) an effective transition to kindergarten and to grade 1 for students; and

(B) appropriate expectations for the students' learning and development as the students make the transition to kindergarten and to grade 1; and

(3) the remainder of the grant funds to award subgrants to local educational agencies.

(e) PRIORITY.—In awarding grants under this Act the Secretary shall give priority to State educational agencies that—

(1) on their own or in combination with other government agencies, provide full-day kindergarten to all kindergarten-age children who are from families with incomes below 185 percent of the poverty line within the State; or

(2) demonstrate progress toward providing full-day kindergarten to all kindergarten-age children who are from families with incomes below 185 percent of the poverty line within the State by submitting a plan that shows how the State educational agency will, at a minimum, double the number of such children that were served by a full-day kindergarten program in the school year preceding the school year for which assistance is first sought.

SEC. 5. SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.—Each State educational agency that receives a grant under this Act—

(1) shall reserve an amount sufficient to continue to fund multiyear subgrants awarded under this section; and

(2) shall award subgrants to local educational agencies within the State to enable the local educational agencies to pay the Federal share of the costs of carrying out Kindergarten Plus programs for eligible students.

(b) PRIORITY.—In awarding subgrants under this section the State educational agency shall give priority to local educational agencies—

(1) serving the greatest number or percentage of kindergarten-age children who are from families with incomes below 185 percent of the poverty line, based on data from the most recent school year; and

(2) that propose to significantly reduce the class size and student-to-teacher ratio of the classes in their Kindergarten Plus programs below the average class size and student-to-teacher ratios of kindergarten classes served by the local educational agencies.

(c) FEDERAL SHARE.—The Federal share of the costs of carrying out a Kindergarten Plus program shall be—

(1) 100 percent for the first, second, and third years of the program;

(2) 85 percent for the fourth year of the program; and

(3) 75 percent for the fifth year of the program.

(d) IN-KIND CONTRIBUTIONS.—The non-Federal share of the costs of carrying out a Kindergarten Plus program may be in the form of in-kind contributions.

SEC. 6. STATE APPLICATION.

(a) IN GENERAL.—In order to receive a grant under this Act, a State educational agency shall submit an application to the Secretary at such time and containing such information as the Secretary determines appropriate.

(b) CONSULTATION.—The application shall be developed by the State educational agency in consultation with representatives of early childhood education programs, early childhood education teachers, principals, pupil services personnel, administrators, paraprofessionals, other school staff, early childhood education providers (including Head Start agencies, State prekindergarten program staff, and child care providers), teacher organizations, parents, and parent organizations.

(c) CONTENTS.—At a minimum, the application shall include—

(1) a description of developmentally appropriate teaching practices and curricula for children that will be put in place to be used by local educational agencies and eligible providers offering Kindergarten Plus programs to carry out this Act;

(2) a general description of the nature of the Kindergarten Plus programs to be conducted with funds received under this Act, including—

(A) the number of hours each day and the number of days each week that children in each Kindergarten Plus program will attend the program; and

(B) if a Kindergarten Plus program meets for less than 9 hours a day, how the needs of full-time working families will be addressed;

(3) goals and objectives to ensure that high-quality Kindergarten Plus programs are provided;

(4) an assurance that students enrolled in Kindergarten Plus programs funded under this Act will receive additional comprehensive services (such as nutritional services, health care, and mental health care), as needed; and

(5) a description of how—

(A) the State educational agency will coordinate and integrate services provided under this Act with other educational programs, such as Even Start, Head Start, Reading First, Early Reading First, State-funded preschool programs, preschool programs funded under section 619 or other provisions of part B of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1411 et seq.), and kindergarten programs;

(B) the State will provide professional development for teachers and staff of local educational agencies and eligible providers that receive subgrants under this Act regarding how to address the school readiness needs of children (including early literacy, early mathematics, and positive behavior) before the children enter kindergarten, throughout the school year, and into the summer after kindergarten;

(C) the State will assist Kindergarten Plus programs to provide exemplary parent education and parental involvement activities such as training and materials to assist parents in being their children's first teachers at home or home visiting;

(D) the State will conduct outreach to parents with eligible students, including parents whose native language is not English, parents of children with disabilities, and parents of migratory children; and

(E) the State educational agency will ensure that each Kindergarten Plus program uses developmentally appropriate practices, including practices and materials that are culturally and linguistically appropriate for the population of children being served in the program.

SEC. 7. LOCAL APPLICATION.

(a) IN GENERAL.—In order to receive a subgrant under this Act, a local educational agency shall submit an application to the State educational agency at such time and containing such information as the State educational agency determines appropriate.

(b) CONSULTATION.—The application shall be developed by the local educational agency in consultation with early childhood education teachers, principals, pupil services personnel, administrators, paraprofessionals, other school staff, early childhood education providers (including Head Start agencies, State prekindergarten program staff, and child care providers), teacher organizations, parents, and parent organizations.

(c) CONTENTS.—At a minimum, the application shall include a description of—

(1) the standards, research-based and developmentally appropriate curricula, teaching practices, and ongoing assessments for the purposes of improving instruction and services, to be used by the local educational agency that—

(A) are aligned with the State expectations for what children should know and be able to do when the children enter kindergarten and grade 1, as set by the State educational agency; and

(B) include—

(i) language skills, including an expanded use of vocabulary;

(ii) interest in and appreciation of books, reading, writing alone or with others, and phonological and phonemic awareness;

(iii) prematheматics knowledge and skills, including aspects of classification, seriation, number sense, spatial relations, and time;

(iv) other cognitive abilities related to academic achievement;

(v) social and emotional development, including self-regulation skills;

(vi) physical development, including gross and fine motor development skills;

(vii) in the case of limited English proficiency, progress toward the acquisition of the English language; and

(viii) approaches to learning;

(2) how the local educational agency will ensure that the Kindergarten Plus program uses curricula and practices that—

(A) are developmentally, culturally, and linguistically appropriate for the population of children served in the program; and

(B) are aligned with the State learning standards and expectations for children in kindergarten and grade 1;

(3) how the Kindergarten Plus program will improve the school readiness of children served by the local educational agency under this Act, especially in mathematics and reading;

(4) how the Kindergarten Plus program will provide continuity of services and learning for children who were previously served by a different program;

(5) how the local educational agency will ensure that the Kindergarten Plus program has appropriate services and accommodations in place to serve children with disabilities and children who are limited English proficient;

(6) how the local educational agency will perform a needs assessment to avoid duplication with other programs within the geographic area served by the local educational agency;

(7) how the local educational agency will—

(A) transition Kindergarten Plus participants into local elementary school programs and services;

(B) ensure the development and use of systematic, coordinated records on the educational development of each child participating in the Kindergarten Plus program through periodic meetings and communications among—

(i) Kindergarten Plus program teachers;

(ii) elementary school staff; and

(iii) local early childhood education program providers, including Head Start agencies, State prekindergarten program staff, and center-based and family child care providers;

(C) provide parent and child orientation sessions conducted by teachers and staff; and

(D) provide a qualified staff person to be in charge of coordinating the transition services;

(8) how the local educational agency will provide instructional and environmental accommodations in the Kindergarten Plus program for children who are limited English proficient, children with disabilities, migratory children, neglected or delinquent youth, Indian children served under part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7401 et seq.), homeless children, and immigrant children;

(9) how the local educational agency will conduct outreach to parents of eligible students, including parents whose native language is not English, parents of children with disabilities, and parents of migratory children, which may include—

(A) activities to provide parents early exposure to the school environment, including meetings with teachers and staff;

(B) activities to better engage and inform parents on the benefits of Kindergarten Plus and other programs; and

(C) other efforts to ensure that parents have a level of comfort with the Kindergarten Plus program and the school environment;

(10) how the local educational agency will assist the Kindergarten Plus program to provide exemplary parent education and parental involvement activities such as training and materials to assist parents in being their children's first teachers at home or home visiting; and

(11) how the local educational agency will work with local center-based and family child care providers and Head Start agencies to ensure—

(A) the nonduplication of programs and services; and

(B) that the needs of working families are met through child care provided before and after the Kindergarten Plus program.

SEC. 8. LOCAL REQUIREMENTS AND PROVISIONS.

(a) LOCAL USES OF FUNDS.—A local educational agency that receives a subgrant under this Act shall use the subgrant funds for the following:

(1) The operational and program costs associated with the Kindergarten Plus program as described in the application to the State educational agency.

(2) Personnel services, including teachers, paraprofessionals, and other staff as needed.

(3) Additional services, as needed, including snacks and meals, mental health care, health care, linguistic assistance, special education and related services, and transportation services associated with the needs of the children in the program.

(4) Transition services to ensure children make a smooth transition into first grade and proper communication is made with the elementary school on the educational development of each child.

(5) Outreach and recruitment activities, including community forums and public service announcements in local media in various languages if necessary to ensure that all individuals in the community are aware of the availability of such program.

(6) Parental involvement programs, including materials and resources to help parents become more involved in their child's learning at home.

(7) Extended day services for the eligible students of working families, including working with existing programs in the community to coordinate services if possible.

(8) Child care services, provided through coordination with local center-based child care and family child care providers, and Head Start agencies, before and after the Kindergarten Plus program for the children participating in the program, to accommodate the schedules of working families.

(9) Enrichment activities, such as—

(A) art, music, and other creative arts;

(B) outings and field trips; and

(C) other experiences that support children's curiosity, motivation to learn, knowledge, and skills.

(b) ELIGIBLE PROVIDER GRANTS AND APPLICATIONS.—The local educational agency may use subgrant funds received under this Act to award a grant to an eligible provider to enable the eligible provider to carry out a Kindergarten Plus program for the local educational agency. Each eligible provider desiring a grant under this subsection shall submit an application to the local educational agency that contains the descriptions set forth in section 7 as applied to the eligible provider.

(c) CONTINUITY.—In carrying out a Kindergarten Plus program under this Act, a local educational agency is encouraged to explore ways to develop continuity in the education of children, for instance by keeping, if possible, the same teachers and personnel from the summer before kindergarten, through the kindergarten year, and during the summer after kindergarten.

(d) COORDINATION.—In carrying out a Kindergarten Plus program under this Act, a local educational agency shall coordinate with existing programs in the community to provide extended care and comprehensive services for children and their families in need of such care or services.

SEC. 9. TEACHER AND PERSONNEL QUALITY STANDARDS.

To be eligible for a subgrant under this Act, each local educational agency shall ensure that—

(1) each Kindergarten Plus classroom has—

(A) a highly qualified teacher, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801); or

(B) if an eligible provider who is not a local educational agency is providing the Kindergarten Plus program in accordance with section 8(b), a teacher that, at a minimum, has a bachelor's degree in early childhood education or a related field and experience in teaching children of this age;

(2) a qualified paraprofessional that meets the requirements for paraprofessionals under section 1119 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6319), is in each Kindergarten Plus classroom;

(3) Kindergarten Plus teachers and paraprofessionals are compensated on a salary scale comparable to kindergarten through grade 3 teachers and paraprofessionals in public schools served by the local educational agency; and

(4) Kindergarten Plus class sizes do not exceed the class size and ratio parameters set at the State or local level for the traditional kindergarten program.

SEC. 10. DIRECT GRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) GRANTS AUTHORIZED.—If a State educational agency does not apply for a grant

under this Act or does not have an application approved under section 6, then the Secretary is authorized to award a grant to a local educational agency within the State to enable the local educational agency to pay the Federal share of the costs of carrying out a Kindergarten Plus program.

(b) ELIGIBILITY.—A local educational agency shall be eligible to receive a grant under this section if the local educational agency operates a full-day kindergarten program that, at a minimum, is targeted to kindergarten-age children who are from families with incomes below 185 percent of the poverty line within the State.

(c) APPLICATION.—In order to receive a grant under subsection (a), a local educational agency shall submit to the Secretary an application that—

(1) contains the descriptions set forth in section 7; and

(2) includes an assurance that the Kindergarten Plus program funded under such grant will serve eligible students.

(d) APPLICABILITY.—Sections 8 and 9 shall apply to a local educational agency receiving a grant under this section in the same manner as the sections apply to a local educational agency receiving a subgrant under section 5(a).

SEC. 11. EVALUATION, COLLECTION, AND DISSEMINATION OF INFORMATION.

(a) IN GENERAL.—Each State educational agency that receives a grant under this Act, in cooperation with the local educational agencies in the State that receive a subgrant under this Act, shall create an evaluation mechanism to determine the effectiveness of the Kindergarten Plus programs in the State, taking into account—

(1) information from the local needs assessment, conducted in accordance with section 7(c)(6), including—

(A) the number of eligible students in the geographic area;

(B) the number of children served by Kindergarten Plus programs, disaggregated by family income, race, ethnicity, native language, and prior enrollment in an early childhood education program; and

(C) the number of children with disabilities served by Kindergarten Plus programs;

(2) the recruitment of teachers and staff for Kindergarten Plus programs, and the retention of such personnel in the programs for more than 1 year;

(3) the provision of services for children and families served by Kindergarten Plus programs, including parent education, home visits, and comprehensive services for families who need such services;

(4) the opportunities for professional development for teachers and staff; and

(5) the curricula used in Kindergarten Plus programs.

(b) COMPARISON.—The evaluation process may include comparison groups of similar children who do not participate in a Kindergarten Plus program.

(c) INFORMATION COLLECTION AND REPORTING.—The information necessary for the evaluation shall be collected yearly by the State and reported every 2 years by the State to the Secretary.

(d) ANALYSIS OF EFFECTIVENESS.—The Secretary shall conduct an analysis of the overall effectiveness of the programs assisted under this Act and make the analysis available to Congress, and the public, biannually.

SEC. 12. SUPPLEMENT NOT SUPPLANT.

Funds made available under this Act shall be used to supplement, not supplant, other Federal, State, or local funds available to carry out activities under this Act.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized to be appropriated $1,500,000,000 for fiscal year 2009 and such sums as may be necessary for each of the fiscal years 2010 through 2014.

By Mr. LEAHY (for himself and Mr. BOND):

S. 2760. A bill to amend title 10, United States Code, to enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, and for other purposes; to the Committee on Armed Services.

Mr. LEAHY. Mr. President, today I am pleased again to join my friend and colleague Senator KIT BOND of Missouri in bringing to the Senate another matter of importance to the missions of the National Guard and to the dedicated men and women of the Guard who perform these missions.

Today we are introducing the National Guard Empowerment and State-National Defense Integration Act of 2008. We introduce this legislation on behalf of the 91-member U.S. Senate National Guard Caucus, which we co-chair. The military is still not structured properly to respond to the domestic emergencies that we know will come again. This legislation would take us tangible steps forward in correcting that. Our bill would sharpen the Defense Department's focus on helping the National Guard respond to domestic emergencies.

This legislation is a new phase in our bipartisan and bicameral drive to empower the Guard for successfully meeting the challenges that our States and the Nation are asking the Guard to meet. It would clear away bureaucratic cobwebs in the Defense Department's organizational structure to improve decision making on homeland defense issues that involve the Guard. This bill builds on some of the strong provisions enacted from the previous version of the Guard Empowerment Bill in the recently enacted fiscal year 2008 Defense Authorization Bill. By empowering the National Guard through more responsibilities, authorities, and new lines of control, this bill focuses the Defense Department's attention on this critical realm of domestic defense. The bill structures potential military operations within the U.S. in a way outlined by the Constitution, ensuring local and State control—not Federal control—in these emergencies.

We know that the military—the active duty force, the National Guard, and the Reserves—has an important role in responding to emergencies at home, events like natural disasters. The events of Hurricane Katrina and so many other situations have amply underscored that reality. Our civilian authorities will continue to want to tap into the resources, personnel, and expertise, and there is no question that we need a system that permits that. The debate taking place, mostly behind the scenes and within the walls of the Pentagon, has been about how we structure that response. The goal must be an effective response in line with the Constitution. Our national charter protects our basic liberties and places sovereignty in the hands of the people through government with adequate checks and balances, splitting administration among Federal, State, and local levels.

This Empowerment Bill would be effective because it drives to enhance the National Guard, our first military responders. This force has stepped up during dire situations time and time again. The National Guard takes its responsibility to carry out relief missions at home as seriously as it takes its missions abroad as the nation's primary military reserve. The National Guard is a locally based force, spread out in armories and readiness centers across the country. The Guard can flow forces among States through the Emergency Management Assistance Compacts process, which helped make the force one of the few shining lights in the darkness of the response to Hurricane Katrina. The National Guard has units that specialize in civil support, including highly trained, full-time teams located in every one of our States. The bottom line is that the Guard has shown that it can do this mission and do it superbly.

The approach of the Empowerment Bill is constitutional because it properly involves every layer of Government. It is our mayors, our public safety chiefs, and our Governors who are responsible for the security of their communities. Under our governmental system, they are the ones that should be in control of emergency situations and any Federal assets that come in should be strictly in support of them—certainly not the other way around. The Guard is a State force that works closely with these civilian authorities all the time. The Guard, which serves under the command of the Governors, is part and parcel of the community. The Guard knows that it is civilians, including their elected leaders and the populace, who are the ultimate decision-makers in these situations.

Our bill includes several key provisions. To improve the quality of advice at the highest levels, the Chief of the National Guard Bureau would gain a full seat on the Joint Chief of Staff, a key advisory body where insufficient attention is paid to homeland defense matters. The bill would ensure that U.S. Northern Command remains a Federal military headquarters that truly supports the Governors and the initial Guard response in an emergency, providing for the Governors to have tactical control over any active duty and Reserve assets that might be operating in their home State during an emergency. The National Guard Bureau is enhanced in another section which specifically gives the National Guard a separate budget to purchase domestic defense-oriented items. The Bureau would carry out its responsibilities in close cooperation with a newly

established planning committee and council that integrally involves the States' Adjutants General. And the bill assigns several key command and deputy command positions to National Guard officers who have experience in homeland defense and domestic emergency response matters.

This fiscal year 2008 Defense Authorization Bill ushered in several improvements to the National Guard, including an elevation of the Bureau Chief to the rank of four-star general. The National Guard Bureau is now more a joint agency than a sub-branch of the Army and the Air Force, though the Guard remains a key part of the Army and Air Force's Total Force. The Deputy Commander or Commander of U.S. Northern Command now must come from the ranks of the National Guard. These are far-reaching steps, though I remain concerned that the Department has yet to implement these provisions, not even filling the four-star position yet.

Together, last year's enacted organizational changes and those put forth in this bill will fundamentally improve our preparations for an emergency, and ensure an effective, swift, and constitutional response when another emergency occurs.

Our National Guard has never let our country down, and—once again—we cannot let our Guard down. I urge prompt attention and action on this vital legislation.

Mr. President, I ask unanimous consent that the text of the bill and supporting material be printed in the RECORD.

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

S. 2760

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Guard Empowerment and State-National Defense Integration Act of 2008''.

SEC. 2. EXPANDED AUTHORITY OF THE CHIEF OF THE NATIONAL GUARD BUREAU.

(a) MEMBERSHIP ON JOINT CHIEFS OF STAFF.—

(1) IN GENERAL.—Section 151(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(7) The Chief of the National Guard Bureau.''.

(2) CONFORMING AMENDMENT.—Section 10502 of such title is amended—

(A) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(B) by inserting after subsection (c) the following new subsection (d):

''(d) MEMBER OF JOINT CHIEFS OF STAFF.—The Chief of the National Guard Bureau shall perform the duties prescribed for him or her as a member of the Joint Chiefs of Staff under section 151 of this title.''.

(b) ANNUAL REPORT TO CONGRESS ON VALIDATED REQUIREMENTS.—Section 10504 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(c) ANNUAL REPORT ON VALIDATED REQUIREMENTS.—Not later than December 31 each year, the Chief of the National Guard Bureau shall submit to Congress a report on the following:

''(1) The requirements validated under section 10503a(b)(1) of this title during the preceding fiscal year.

''(2) The requirements referred to in paragraph (1) for which funding is to be requested in the next budget for a fiscal year under section 10544 of this title.

''(3) The requirements referred to in paragraph (1) for which funding will not be requested in the next budget for a fiscal year under section 10544 of this title.''.

SEC. 3. EXPANDED FUNCTIONS OF THE NATIONAL GUARD BUREAU.

(a) MILITARY ASSISTANCE FOR CIVIL AUTHORITIES.—Chapter 1011 of title 10, United States Code, is amended by inserting after section 10503 the following new section:

''§ 10503a. Functions of National Guard Bureau: military assistance to civil authorities

''(a) IDENTIFICATION OF ADDITIONAL NECESSARY ASSISTANCE.—The Chief of the National Guard Bureau shall—

''(1) identify gaps between Federal and State military capabilities to prepare for and respond to emergencies; and

''(2) make recommendations to the Secretary of Defense on programs and activities of the National Guard for military assistance to civil authorities to address such gaps.

''(b) SCOPE OF RESPONSIBILITIES.—In meeting the requirements of subsection (a), the Chief of the National Guard Bureau shall, in coordination with the adjutants general of the States, have responsibilities as follows:

''(1) To validate the requirements of the several States and Territories with respect to military assistance to civil authorities.

''(2) To develop doctrine and training requirements relating to the provision of military assistance to civil authorities.

''(3) To acquire equipment, materiel, and other supplies and services for the provision of military assistance to civil authorities.

''(4) To assist the Secretary of Defense in preparing the budget required under section 10544 of this title.

''(5) To administer amounts provided the National Guard for the provision of military assistance to civil authorities.

''(6) To carry out any other responsibility relating to the provision of military assistance to civil authorities as the Secretary of Defense shall specify.

''(c) ASSISTANCE.—The Chairman of the Joint Chiefs of Staff shall assist the Chief of the National Guard Bureau in carrying out activities under this section.

''(d) CONSULTATION.—(1) The Chief of the National Guard Bureau shall carry out activities under this section through and utilizing an integrated planning process established by the Chief of the National Guard Bureau for purposes of this subsection. The planning process may be known as the 'National Guard Bureau Strategic Integrated Planning Process'.

''(2)(A) Under the integrated planning process established under paragraph (1)—

''(i) the planning committee described in subparagraph (B) shall develop and submit to the planning directorate described in subparagraph (C) plans and proposals on such matters under the planning process as the Chief of the National Guard Bureau shall designate for purposes of this subsection; and

''(ii) the planning directorate shall review and make recommendations to the Chief of the National Guard Bureau on the plans and proposals submitted to the planning directorate under clause (i).

''(B) The planning committee described in this subparagraph is a planning committee (to be known as the 'State Strategic Integrated Planning Committee') composed of the adjutant general of each of the several States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and the District of Columbia.

''(C) The planning directorate described in this subparagraph is a planning directorate (to be known as the 'Federal Strategic Integrated Planning Directorate') composed of the following (as designated by the Secretary of Defense for purposes of this subsection):

''(i) A major general of the Army National Guard.

''(ii) A major general of the Air National Guard.

''(iii) A major general of the regular Army.

''(iv) A major general of the regular Air Force.

''(v) A major general (other than a major general under clauses (iii) and (iv)) of the United States Northern Command.

''(vi) The Director of the Joint Staff of the National Guard Bureau under section 10505 of this title.

''(vii) Seven adjutants general from the planning committee under paragraph (B).''.

(b) BUDGETING FOR TRAINING AND EQUIPMENT FOR MILITARY ASSISTANCE TO CIVIL AUTHORITIES AND OTHER DOMESTIC MISSIONS.—Chapter 1013 of such title is amended by adding at the end the following new section:

''§ 10544. National Guard training and equipment: budget for military assistance to civil authorities and for other domestic operations

''(a) IN GENERAL.—The budget justification documents materials submitted to Congress in support of the budget of the President for a fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) shall specify separate amounts for training and equipment for the National Guard for purposes of military assistance to civil authorities and for other domestic operations during such fiscal year.

''(b) SCOPE OF FUNDING.—The amounts specified under subsection (a) for a fiscal year shall be sufficient for purposes as follows:

''(1) The development and implementation of doctrine and training requirements applicable to the assistance and operations described in subsection (a) for such fiscal year.

''(2) The acquisition of equipment, materiel, and other supplies and services necessary for the provision of such assistance and such operations in such fiscal year.''.

(c) CLERICAL AMENDMENTS.—

(1) The table of sections at the beginning of chapter 1011 of such title is amended by inserting after the item relating to section 10503 the following new item:

''10503a. Functions of National Guard Bureau: military assistance to civil authorities.''.

(2) The table of sections at the beginning of chapter 1013 of such title is amended by adding at the end the following new item:

''10544. National Guard training and equipment: budget for military assistance to civil authorities and for other domestic operations.''.

SEC. 4. REDESIGNATION OF POSITIONS OF DIRECTOR OF THE ARMY NATIONAL GUARD, DIRECTOR OF THE AIR NATIONAL GUARD, AND ASSOCIATED POSITIONS.

(a) REDESIGNATION.—Section 10506 of title 10, United States Code, is amended—

(1) by striking ''Director, Army National Guard'' each place it appears and inserting ''Vice Chief, Army National Guard'';

(2) by striking ''Deputy Director, Army National Guard'' each place it appears and inserting ''Deputy Vice Chief, Army National Guard'';

(3) by striking ''Director, Air National Guard'' each place it appears and inserting ''Vice Chief, Air National Guard''; and

(4) by striking ''Deputy Director, Air National Guard'' each place it appears and inserting ''Deputy Vice Chief, Air National Guard''.

(b) CONFORMING AMENDMENT.—Section 14512(a)(2)(D) of such title is amended by striking ''Director of the Army National Guard, or Director of the Air National Guard'' and inserting ''Vice Chief of the Army National Guard, or Vice Chief of the Air National Guard''.

(c) REFERENCES.—

(1) DIRECTOR, ARMY NATIONAL GUARD.—Any reference in a law, regulation, document, paper, or other record of the United States to the Director of the Army National Guard shall be deemed to be a reference to the Vice Chief of the Army National Guard.

(2) DEPUTY DIRECTOR, ARMY NATIONAL GUARD.—Any reference in a law, regulation, document, paper, or other record of the United States to the Deputy Director of the Army National Guard shall be deemed to be a reference to the Deputy Vice Chief of the Army National Guard.

(3) DIRECTOR, AIR NATIONAL GUARD.—Any reference in a law, regulation, document, paper, or other record of the United States to the Director of the Air National Guard shall be deemed to be a reference to the Vice Chief of the Air National Guard.

(4) DEPUTY DIRECTOR, AIR NATIONAL GUARD.—Any reference in a law, regulation, document, paper, or other record of the United States to the Deputy Director of the Air National Guard shall be deemed to be a reference to the Deputy Vice Chief of the Air National Guard.

SEC. 5. TREATMENT OF CERTAIN SERVICE AS JOINT DUTY EXPERIENCE.

(a) VICE CHIEFS, ARMY AND AIR NATIONAL GUARD.—Section 10506(a)(3) of title 10, United States Code, as amended by section 4(a) of this Act, is further amended—

(1) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively; and

(2) by inserting after subparagraph (B) the following new subparagraph (C):

''(C) Service of an officer as adjutant general shall be treated as joint duty experience for purposes of assignment or promotion to any position designated by law as open to a National Guard general officer.''.

(b) ADJUTANTS GENERAL AND SIMILAR OFFICERS.—The service of an officer of the Armed Forces as adjutant general, or as an officer (other than adjutant general) of the National Guard of a State who performs the duties of adjutant general under the laws of such State, shall be treated as joint duty or joint duty experience for purposes of any provisions of law required such duty or experience as a condition of assignment or promotion.

(c) ANNUAL REPORTS ON DUTY IN JOINT FORCE HEADQUARTERS TO QUALIFY AS JOINT DUTY EXPERIENCE.—Not later than six months after the date of the enactment of this Act, and annually thereafter, the Chief of the National Guard Bureau shall, in consultation with the adjutants general of the National Guard, submit to the Chairman of the Joint Chiefs of Staff and to Congress a report setting forth the recommendations of the Chief of the National Guard Bureau as to which duty of officers, and which duty of enlisted members, of the National Guard in the Joint Force Headquarters of the National Guard of the States should qualify as joint duty or joint duty experience for purposes of the provisions of law requiring such duty or experience as a condition of assignment or promotion.

(d) ANNUAL REPORTS ON JOINT EDUCATION COURSES.—Not later than six months after the date of the enactment of this Act, and annually thereafter, the Chairman of the Joint Chiefs of Staff shall submit to Congress a report setting forth information on the joint education courses available through the Department of Defense for purposes of the pursuit of joint careers by officers in the Armed Forces. Each report shall include, for the preceding year, the following:

(1) A list and description of the joint education courses so available during such year.

(2) A list and description of the joint education courses listed under paragraph (1) that are available to and may be completed by officers of the reserve components of the Armed Forces in other than an in-resident duty status under title 10, United States Code, or title 32, United States Code.

(3) For each course listed under paragraph (1), the number of officers from each Armed Force who pursued such course during such year, including the number of officers of the Army National Guard, and of the Air National Guard, who pursued such course.

SEC. 6. ENHANCEMENT OF AUTHORITIES RELATING TO THE UNITED STATES NORTHERN COMMAND AND OTHER COMBATANT COMMANDS.

(a) COMMANDS RESPONSIBLE FOR SUPPORT TO CIVIL AUTHORITIES IN THE UNITED STATES.—The United States Northern Command and the United States Pacific Command shall be the combatant commands of the Armed Forces that are principally responsible for the support of civil authorities in the United States by the Armed Forces.

(b) DISCHARGE OF RESPONSIBILITY.—In discharging the responsibility set forth in subsection (a), the Commander of the United States Northern Command and the Commander of the United States Pacific Command shall each—

(1) in consultation with and acting through the Chief of the National Guard Bureau and the Joint Force Headquarters of the National Guard of the State or States concerned, assist the States in the employment of the National Guard under State control, including National Guard operations conducted in State active duty or under title 32, United States Code; and

(2) facilitate the deployment of the Armed Forces on active duty under title 10, United States Code, as necessary to augment and support the National Guard in its support of civil authorities when National Guard operations are conducted under State control, whether in State active duty or under title 32, United States Code.

(c) MEMORANDUM OF UNDERSTANDING.—

(1) MEMORANDUM REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Commander of the United States Northern Command, the Commander of the United States Pacific Command, and the Chief of the National Guard Bureau shall, with the approval of the Secretary of Defense, jointly enter into a memorandum of understanding setting forth the operational relationships, and individual roles and responsibilities, during responses to domestic emergencies among the United States Northern Command, the United States Pacific Command, and the National Guard Bureau.

(2) MODIFICATION.—The Commander of the United States Northern Command, the Commander of the United States Pacific Command, and the Chief of the National Guard Bureau may from time to time modify the memorandum of understanding under this subsection to address changes in circumstances and for such other purposes as the Commander of the United States Northern Command, the Commander of the United States Pacific Command, and the Chief of the National Guard Bureau jointly consider appropriate. Each such modification shall be subject to the approval of the Secretary of Defense.

(d) AUTHORITY TO MODIFY ASSIGNMENT OF COMMAND RESPONSIBILITY.—Nothing in this section shall be construed as altering or limiting the power of the President or the Secretary of Defense to modify the Unified Command Plan in order to assign all or part of the responsibility described in subsection (a) to a combatant command other than the United States Northern Command or the United States Pacific Command.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations for purposes of aiding the expeditious implementation of the authorities and responsibilities in this section.

SEC. 7. STATE CONTROL OF FEDERAL MILITARY FORCES ENGAGED IN ACTIVITIES WITHIN THE STATES AND POSSESSIONS.

(a) IN GENERAL.—Part I of subtitle A of title 10, United States Code, is amended by inserting after chapter 15 the following new chapter:

''CHAPTER 16—CONTROL OF THE ARMED FORCES IN ACTIVITIES WITHIN THE STATES AND POSSESSIONS

''Sec.

''341. Tactical control of the armed forces engaged in activities within the States and possessions: emergency response activities.

''§ 341. Tactical control of the armed forces engaged in activities within the States and possessions: emergency response activities

''(a) IN GENERAL.—The Secretary of Defense shall prescribe in regulations policies and procedures to assure that tactical control of the armed forces on active duty within a State or possession is vested in the governor of the State or possession, as the case may be, when such forces are engaged in emergency response activities within such State or possession.

''(b) DISCHARGE THROUGH JOINT FORCE HEADQUARTERS.—The policies and procedures required under subsection (a) shall provide for the discharge of tactical control by the governor of a State or possession as described in that subsection through the Joint Force Headquarters of the National Guard in the State or possession, as the case may be, acting through the officer of the National Guard in command of the Headquarters.

''(c) POSSESSIONS DEFINED.—Notwithstanding any provision of section 101(a), in this section, the term 'possessions' means the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.''.

(b) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of title 10, United States Code, and at the beginning of part I of subtitle A of such title, are each amended by inserting after the item relating to chapter 15 the following new item:

''16. Control of the Armed Forces in Activities Within the States and Possessions ..... 341''.

SEC. 8. REQUIREMENTS RELATING TO NATIONAL GUARD OFFICERS IN CERTAIN COMMAND POSITIONS.

(a) COMMANDER OF ARMY NORTH COMMAND.—The officer serving in the position of Commander, Army North Command, shall be an officer in the Army National Guard of the United States.

(b) COMMANDER OF AIR FORCE NORTH COMMAND.—The officer serving in the position of Commander, Air Force North Command, shall be an officer in the Air National Guard of the United States.

(c) SENSE OF CONGRESS.—It is the sense of Congress that, in assigning officers to the command positions specified in subsections (a) and (b), the President should afford a preference in assigning officers in the Army National Guard of the United States or Air National Guard of the United States, as applicable, who have served as the adjutant general of a State.

(d) CERTAIN JOINT TASK FORCE POSITIONS.—

(1) IN GENERAL.—Of the officers serving in the positions specified in each subparagraph of paragraph (2), as least one such officer under each subparagraph shall be an officer in the Army National Guard of the United States or an officer in the Air National Guard of the United States.

(2) COVERED POSITIONS.—The positions specified in this paragraph are:

(A) Commander, Joint Task Force Alaska, and Deputy Commander, Joint Task Force Alaska.

(B) Commander, Joint Task Force Civil Support, and Deputy Commander, Joint Task Force Civil Support.

(C) Commander, Joint Task Force North, and Deputy Commander, Joint Task Force North.

SUMMARY: NATIONAL GUARD EMPOWERMENT AND STATE-NATIONAL DEFENSE INTEGRATION ACT OF 2008

PURPOSE

To enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response

SECTION 1: Title

National Guard Empowerment and State-National Defense Integration Act of 2008

Section 2: Joint Chiefs of Staff

Make the Chief of the National Guard Bureau a full member of the Joint Chiefs of Staff

Section 3: Guard Bureau Duties

Formally give the Guard Bureau the function of working with the states to identify equipment gaps for the purpose of providing military assistance to civil authorities. The Bureau shall work with states—through a State/Adjutant General-dominated planning committee and Federal planning directorate—to validate equipment requirements, develop doctrine for assisting civil authorities in emergencies, acquire necessary equipment, prepare a military assistance budget, and administer the funding provided for military assistance.

Section 4: Vice Chiefs

Rename the positions of Activities Directors of the Army and Air National Guard to ''Deputy Vice Chief, Army National Guard'' and ''Deputy Vice Chief, Air National Guard,'' respectively.

Section 5: Joint Duty Credit

Provides the Adjutant Generals of the United States with so-called Joint Duty Credit for their experience in the position. Requires the Department of Defense to provide a report on providing joint-duty credit for officers serving in National Guard Joint Force Headquarters, as well as summary of Joint-Duty courses available for Reserve Components officers interested in following a joint career.

Section 6: Northern Command

States that Northern Command and Pacific Command are the commands responsible for providing military assistance for civil authorities, and, to carry out that responsibility, these commands must assist the states in employing the National Guard and facilitate the deployment of Title 10 forces to supplement and support the Guard, whether operating in State Active Duty or under Title 32 United State Code. Northern Command and Pacific Command must complete a Memorandum of Understanding with the National Guard Bureau on their operational relationship within 180 days of enactment.

Section 7: Governor's Tactical Control

Direction to the Department of Defense to establish procedures for the nation's Governors to have tactical control over the military forces, including Title 10 active forces, operating in their state during an emergency. Such tactical control will be exercised by the Governor through the Joint Forces Headquarters of the National Guard of the State. According to Department of Defense standard terms, Tactical Control is ''Command authority over assigned or attached forces or commands ... that is limited to the detailed direction and control of movements or maneuvers within the operational area necessary to accomplish missions or tasks assigned.''

Section 8: National Guard Command Positions

A National Guard officer will remain Commander of Air Force North, while Guard officers shall become the Commander Army North, and Commander or Deputy Commander of Joint Task Force Alaska, Joint Task Force Civil Support, and Joint Task Force North.

NATIONAL GUARD ASSOCIATION
OF THE UNITED STATES, INC.,
Washington, DC, March 13, 2008.

Hon. PATRICK LEAHY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: The National Guard Association of the United States applauds your introduction of the ''National Guard Empowerment and State-National Defense Integration Act of 2008.'' Your legislation is the logical next step in fully codifying the initiatives that had their birth two years ago in the National Guard Empowerment Act.

With the passage of the National Defense Authorization Act for 2008, many of the substantive elements of ''empowerment'' for the National Guard have been presented to the Department of Defense for immediate implementation in accordance with the wishes of the Congress. We are eagerly awaiting their timely response.

Meanwhile, we support the additional well-reasoned legislative remedies contained in your new bill that will knit together the missing pieces of the empowerment concept. In our view, empowerment for the National Guard is simply a restatement, in contemporary language, of the reliance placed on the National Guard by the framers of the United States Constitution in Article 1, Section 8.

Thank you for leading this effort for the American people.

Sincerely,

STEPHEN M. KOPER,
Brigadier General, USAF (ret),
President.

ADJUTANTS GENERAL ASSOCIATION
OF THE UNITED STATES,
Washington, DC, March 13, 2008.

Hon. PATRICK LEAHY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: The Adjutants General Association of the United States commends you, your colleagues and your staff on your foresight in introducing the ''National Guard Empowerment and State-National Defense Integration Act of 2008.'' This legislation will take the next logical step in advancing the gains of the National Guard Empowerment Act and ensuring the intent of that legislation is met.

We understand and appreciate just how hard you and the entire Guard Caucus worked to gain passage of the National Defense Authorization Act for 2008, which gave birth to ''empowerment'' for the National Guard. However, the realization of empowerment has been slow to materialize. With the introduction of this legislation, we are hopeful that the Department of Defense will act in accordance with the wishes of the Congress.

Again, we thank you for your new bill which will serve to complete the vision of the empowerment concept, which had its genesis two years ago with the original National Guard Empowerment Act. It is clear that empowerment for the National Guard remains a priority of the Congress.

We thank you for your continuing efforts on the National Guard's behalf.

Sincerely,

FRANCIS D. VAVALA,
MAJOR GENERAL, DEARNG,
President AGAUS.

ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE UNITED STATES,
Alexandria, VA, March 13, 2008.

Hon. PATRICK LEAHY,
U.S. Senate, Washington, D.C.
Hon. KIT BOND,
U.S. Senate, Washington, DC.

The Enlisted Association of the National Guard of the United States, EANGUS is pleased to express our strongest possible support, on behalf of the Enlisted men and women of the Army and Air National Guard, in your efforts to amend Title 10 of the United States Code to enhance the responsibilities of the Chief of the National Guard Bureau and the functions of the National Guard Bureau.

Although some historic changes were made in Public Law 110–181, signed by the President on January 28,2008, many of the original provisions of the National Guard Empowerment Act of2007 were ''left on the cutting table'' and not enacted into law. These valuable and necessary provisions must be addressed and are addressed in your legislation.

Our association stands firm in support of your action to remedy this error of omission. The lack of respect of the leadership of the National Guard by service secretaries and leaders, the consistent under-funding of National Guard appropriations accounts, and the intentional lack of communication and coordination all have the possibility of being rectified by this legislation by making the Chief a full partner in the decision-making and appropriations process.

Thank you for taking legislative action that is not only timely, but unfortunately necessary, and long overdue. We look forward to working with your staff as this legislation works its way into law.

Working for America's Best!

MICHAEL P. CLINE,
Master Sergeant, USA (Ret),
Executive Director.

By Mr. KYL (for himself, Mr. COBURN, Mr. CRAIG, and Mr. BUNNING):

S. 2762. A bill to prioritize the provision of assistance to combat HIV/AIDS, tuberculosis, and malaria to in-need countries; to the Committee on Foreign Relations.

Mr. KYL. Mr. President, I rise today to call attention to the reauthorization of the President's Emergency Plan for AIDS Relief, also known as PEPFAR.

The program authorized in 2003 provided $15 billion over 5 years to the cause of AIDS relief in parts of the world ravaged by that disease. PEPFAR was a demonstration of the American people's desire to help those in need.

The 2003 legislation was also a demonstration of the American people's desire that their generosity not be wasted, as they have seen before with so many other aid programs. To that end, the legislation required that the lion's share of the funds be devoted to treatment of patients in need.

It encouraged accountability and transparency and it funded programs that could demonstrate results, such as the requirement that one third of prevention funds be spent on abstinence education programs—a decision that has kept countless persons from getting infected with HIV since 2003.

It is therefore mind boggling to me that recent reauthorization proposals the bill passed by the House Foreign Affairs Committee last week and the bill scheduled for mark up by the Senate Foreign Relations Committee today—would take such giant steps backward.

The bill originally introduced in the House would have eliminated the conscience clause, which protects humanitarian and medical professionals involved in these programs from having to participate in prevention and treatment methods that they find morally or religiously objectionable. Wisely, this provision was kept in the bill passed by the House committee, though it is substantially watered down—to the point of being nonbinding—in the Senate Foreign Relations Committee bill.

The original House bill struck the requirement that organizations that receive PEPFAR grants be opposed to prostitution and sex trafficking. That these commonsense provisions were even in danger of being dropped in the reauthorization of PEPFAR is sadly telling. It appears the Senate Foreign Relations Committee chose not to challenge such an unimpeachable provision of law.

And, unlike the majority on the House Foreign Affairs Committee, which backed down from including many troubling provisions on abortion and family planning demanded by far left groups, it appears the Senate Committee bill would pander to the so-called ''family planning'' agenda.

I am also deeply troubled that both the House Foreign Affairs Committee and Senate Foreign Relations Committee reauthorization proposals remove the requirement that at least fifty-five percent of the funds in the program be spent on treatment of AIDS patients. This provision was an important check on bureaucratic wastefulness and ''make work'' and it must be preserved.

Additionally, the requirement that thirty-three percent of PEPFAR prevention funds be spent on abstinence education, removed by the majority in last year's omnibus appropriations process, has not been restored in either of these two reauthorization proposals. In fact, all that remains in the tatters of that requirement in either of these bills is something only a bureaucrat could love: in the event a future AIDS coordinator chooses to ignore abstinence education, a report must be sent to Congress.

What is more, both of these reauthorization proposals include provisions that appear to undermine protections for intellectual property, the same protections that are necessary to ensure that innovation and research into life-saving medications continue.

While I am sure the sponsors of these two proposals are well-meaning, they further increase support for TB and malaria programs, even though the U.S. is already the largest contributor to TB and malaria programs through the Global Fund. Sadly, the Global Fund has become synonymous with graft and multilateral bureaucratic waste in many countries. We should not be duplicating those existing programs. We owe it to the American taxpayer, and those people suffering from these dreaded diseases, to fix the problems that abound in the Global Fund.

Lastly, but most significantly, both reauthorization proposals more than triple the expenditure for PEPFAR—something we simply cannot afford. PEPFAR 2003 authorized $15 billion over 5 years for emergency AIDS relief. Not satisfied with a mere doubling of this program as requested, both of these proposals would provide $50 billion over 5 years.

As I have noted already, the American people are a generous people. Our annual foreign aid budget reflects this generosity. However, this ability to give is not limitless.

Need I remind my colleagues, our economy is in distress. The presidential candidates on the other side are calling for a Federal Government bailout of homeowners facing foreclosure: with $50 billion, we could provide 235,157 homeowners with such a bailout.

Moreover, Congress just passed, and the president just signed, a program to provide Americans with checks intended to stimulate the economy. While I have doubts that this plan will succeed, I note that with this $50 billion, 157 million tax filers could be given rebate checks of $318.47.

Alternatively, with $50 billion, we could ''fully fund'' both No Child Left Behind and the Individuals with Disabilities Education Act at their authorized levels for one year.

Congress is beginning the annual budget cycle and we are daily confronted with requests for more and more federal spending. Already, key leaders in the budget process are threatening that if they don't get their way on domestic spending, they will add their spending to the forthcoming but overdue War Supplemental or will short circuit the budget process with a continuing resolution or yet another omnibus. Agreeing to this massive increase is not the way to discipline what is already shaping up to be a budget train wreck.

Governing is about choosing. By agreeing to this increase to $50 billion, neither the House nor Senate committees are governing. They are taking the easy course of action: spending.

I supported the President's Emergency Plan for AIDS Relief in 2003. I could reluctantly support doubling that amount over the next five years. But adding another $20 billion on top of that is too much.

We cannot lose sight of the sacrifices of millions of Americans who work hard and pay the taxes that support these programs. $50 billion is too much.

I cannot support a bill that so dramatically spends beyond what we can afford and so wantonly ignores accountability and transparency tools that safeguard the generosity of the American people.

This legislation can still be salvaged.

Yesterday, I cosponsored legislation with the Senator from Oklahoma, Dr. COBURN, and the Senator from North Carolina, Mr. BURR, that sets some key principles that must be a part of the reauthorization.

Earlier today, I introduced a bill that would prohibit the extension of PEPFAR funds away from their core purpose, helping the neediest countries. This legislation must also be a part of the reauthorization of PEPFAR.

I support the PEPFAR program and I believe that it is worth passage if funded at a responsible authorization level with at least the kind of commonsense policy, accountability, and transparency provided in the 2003 bill.

By Mr. DODD:

S. 2767. A bill to provide for judicial discretion regarding suspensions of student eligibility under section 484(r) of the Higher Education Act of 1965; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today to introduce legislation to add judicial discretion to the Higher Education Act Aid Elimination Penalty. Since 1998 the law prevents any student convicted of possession of a controlled substance from receiving Federal financial aid.

Since the penalty was enacted, approximately 200,000 low to middle income students seeking a college education have been disqualified from receiving Federal financial assistance. In many cases, these are committed young people who simply want to make better lives for themselves. In order to be eligible for financial aid in the first place, these students have proven they can perform academically. Unfortunately, they have made the mistake many young people have made experimenting with drugs.

Just like every Senator in this chamber, I want to help keep America's young people from making this mistake and jeopardizing their health and their futures. We should all work to enact policies that effectively deter dangerous drug use. But this is a sophisticated and complicated issue and it cannot be solved by blunt measures such as the Aid Elimination Penalty.

Any drug abuse expert will tell you that helping someone get off of drugs or stay away from trying them requires a variety of approaches. In some cases the fear of consequences, such as the Aid Elimination Penalty, may be enough. But in many other cases, counseling, rehabilitation, and positive reinforcement may offer more effective ways to achieve this goal.

Our laws should reflect the need for varied approaches. Unfortunately, the Aid Elimination Penalty does not. It is a blunt tool that sweeps all cases into the same one size fits all solution. There is little distinction under this law as to whether the drug possession is a major or minor violation and to what degree the infraction affects the community at large; Teenagers bowing to peer-pressure for the first time are treated the same as serious drug users disrupting their communities. This means that while in some cases we are penalizing chronic drug abusers, we are also penalizing good students who will mature and have a better chance of rectifying their mistakes by continuing their education.

What is most disturbing is how the consequences of the penalty can negatively impact the course of a student's life. Many students affected by the Aid Elimination Penalty are forced to leave school since it is no longer affordable without financial assistance. Data from the National Center of Education Statistics demonstrates that many of these students will not continue their education: 36 percent of students who leave 4-year institutions do not return within 5 years and 50 percent of students who leave 2-year institutions do not return within 5 years. For these students, denial of Federal college assistance will only force them from school, and may set them on an even more self destructive course of increased drug use and abuse. In these cases, the Aid Elimination Penalty actually backfires and serves to undermine our efforts to prevent the use and abuse of drugs.

That is why I am introducing this legislation to insert judicial discretion into the current law. My bill would make the penalty dependent on the ruling of a judge, allowing them to weigh the value of implementing the penalty as part of other sanctions and punishments on a case by case basis. This will enable the judge to deny student financial aid if the situation merits it, and if he or she believes it is the most effective or even the only way to help a student get control of his or her life. This legislation would also grant judges the ability, based on the circumstances, to determine that continuation of a college education, in conjunction with rehabilitation and possibly other sanctions, offers both the student and the community the best possible outcome. This is the way the rest of the criminal justice system works and it is the way the Aid Elimination Penalty should be implemented. With this change we can fine tune our approach to this problem and minimize the negative unintended consequences of current law. I urge my colleagues to see the wisdom of this approach and help me to refine the law to be more effective in protecting our communities and ensuring deserving students the opportunity to advance their education.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2767

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JUDICIAL DISCRETION FOR SUSPENSION OF ELIGIBILITY.

Section 484(r) of the Higher Education Act of 1965 (20 U.S.C. 1091(r)) is amended—

(1) in paragraph (1), by striking ''A student'' and inserting ''Subject to paragraph (3), a student'';

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following:

''(3) APPLICABILITY.—This subsection shall only apply to a student if the Federal or State court that convicted the student of an offense described in paragraph (1) has ordered that the student's eligibility for assistance under this title be suspended in accordance with this subsection.''.

By Mr. AKAKA (for himself, Mr. REID, Mr. DURBIN, Mr. BURR, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. OBAMA, Mr. SANDERS, Mr. BROWN, Mr. BAUCUS, Mrs. CLINTON, Mr. KERRY, and Mrs. BOXER):

S. 2768. A bill to provide a temporary increase in the maximum loan guaranty amount for certain housing loans guaranteed by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, today I introduce a bill that would rectify an oversight made in the recent passage of the Economic Stimulus Act of 2008. If enacted, this bill will allow thousands of veterans to realize the American dream of owning a home. Senators REID, DURBIN, BURR, ROCKEFELLER, MURRAY, OBAMA, SANDERS, BROWN, BAUCUS, CLINTON, KERRY, and BOXER join me in offering this legislation.

The VA Home Loan Guaranty was part of the original GI Bill in 1944. It was signed into law by President Franklin D. Roosevelt and provided veterans with a federally guaranteed home loan with no down payment. So, as World War II was ending, landmark legislation made the dream of home ownership a reality for millions of returning veterans. They were able to build new homes and otherwise begin new lives following their service and with the assistance of the Federal Government.

Today, more than 25 million veterans and servicemembers are eligible for VA home loan guarantees. Eligibility extends to veterans who served on active duty for a minimum of 90 days during wartime or a minimum of 181 continuous days during peacetime, and have a discharge other than dishonorable. Members of the Guard and Reserve who have never been called to active duty must serve a total of 6 years in order to be eligible. Certain surviving spouses are also eligible for the housing guarantee.

The amount of the home loan guaranty was last adjusted by the Veterans Benefits Act of 2004. The maximum guaranty amount was increased to 25 percent of the Freddie Mac conforming loan limit determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a single family residence, as adjusted for the year involved. Using that formula, since the Freddie Mac conforming loan limit for a single family residence in 2008 is $417,000, VA will guaranty a veteran's loan up to $104,250, or 25 percent of the Freddie Mac limit. This guaranty exempts homeowners from having to make a down payment or secure private mortgage insurance.

The newly-enacted Economic Stimulus Act of 2008, however, temporarily reset the Fannie Mae, Freddie Mac, and FHA home loan guarantee limits to 125 percent of metropolitan-area median home prices, without reference to the VA home loan program. This had the effect of raising the Fannie Mae and Freddie Mac limits to nearly $730,000, in the highest cost areas, while leaving the VA limit of $417,000 in place.

The measure I am introducing today would correct the oversight in the Economic Stimulus Act and extend the temporary increase to veterans as well.

Unlike the economic stimulus legislation, my legislation would extend the temporary increase to December 31, 2011, rather than just through 2008. This would enable more veterans to utilize their VA benefit to purchase a home. In fact, VA expects that there would be an increase of approximately 4,313 loans as a result of increasing the VA loan limit through December 2011.

I urge all of my colleagues to support this measure, so that this important group of Americans might reap the benefits of an increased home loan guaranty in this time of economic uncertainty.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2768

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TEMPORARY INCREASE IN MAXIMUM LOAN GUARANTY AMOUNT FOR CERTAIN HOUSING LOANS GUARANTEED BY THE SECRETARY OF VETERANS AFFAIRS.

Notwithstanding subparagraph (C) of section 3703(a)(1) of title 38, United States Code, for purposes of any loan described in subparagraph (A)(i)(IV) of such section that is originated during the period beginning on

the date of the enactment of this Act and ending on December 31, 2011, the term ''maximum guaranty amount'' shall mean an amount equal to 25 percent of the higher of—

(1) the limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for the calendar year in which the loan is originated for a single-family residence; or

(2) 125 percent of the area median price for a single-family residence, but in no case to exceed 175 percent of the limitation determined under such section 305(a)(2) for the calendar year in which the loan is originated for a single-family residence.

By Mrs. FEINSTEIN (for herself, Mr. STEVENS, Mr. AKAKA, and Mrs. BOXER):

S. 2770. A bill to amend the Federal Meat Inspection Act to strengthen the food safety inspection system by imposing stricter penalties for the slaughter of nonambulatory livestock; to the Committee on Agriculture, Nutrition, and Forestry.

Mrs. FEINSTEIN. Mr. President, I rise today on behalf of myself, Senator STEVENS and Senator AKAKA to offer a bill that takes a major step forward in protecting our Nation's food supply. This bill will provide penalties for those who are caught trying to slaughter ''nonambulatory'' or downed animals for food, and will improve public notification procedures for voluntary food recalls.

First, this bill would ban the slaughter of ''nonambulatory'' animals for use in food.

Second, it would establish a graduated penalty system providing incentives for slaughter facilities to follow the law regarding nonambulatory animals; and; third, in the event of a meat or poultry recall, it would direct the USDA to release the names of establishments that have received the recalled products so consumers can more easily identify products that could be harmful.

Animals that are sick and too weak to stand or walk on their own should not be slaughtered and used for food.

The safety of our food supply is too important to take any chances.

Processing downed animals poses a health risk especially to vulnerable populations, those who have compromised immune systems, and the very young and elderly who rely on our Government food inspection system to protect them against foodborne illness.

On February 17, 2008, the Westland/Hallmark Meat Company in Chino, CA, issued a recall of over 143 million pounds of beef products that were processed at their plant.

This came after the Humane Society of the U.S. released a video showing workers abusing nonambulatory cows to get them on their feet for slaughter.

The recall brought to the forefront the risk associated with processing sick or injured animals for human consumption.

The potential health risk of slaughtering downed animals became a public concern in late 2003 when a cow imported from Canada was found to have BSE, mad cow disease.

In an effort to keep BSE infected beef out of the food supply, USDA banned all nonambulatory cattle from being slaughtered regardless of the reason.

Since then, the regulation banning nonambulatory cattle from slaughter has been revised to allow USDA veterinarians discretion on a case-by-case basis to allow downed cattle into the food supply.

Clearly, establishments have an incentive to keep all the animals delivered to their facility ambulatory for slaughter.

This legislation provides the incentive for an establishment to follow the laws and regulations governing the humane handling of nonambulatory animals by offering a graduated penalty system for noncompliance.

For a first violation, in addition to temporarily suspending USDA inspection, a fine will be assessed and will be based on a percentage of the establishment's gross income.

A second violation will suspend USDA inspection services for 1 year.

A third violation will withdraw the establishment's Grant of Inspection permanently, effectively closing the operation.

Additionally, to aid in recovering all of the meat products that are recalled, the USDA will be required to promulgate regulation to release the names of establishments that have received recalled products.

This will help distributors, retailers and consumers better identify products that have been recalled to aid them in getting those products off their shelves and out of their homes.

We must ensure that those who process our food provide the safest, most wholesome products possible to consumers, and when a recall is necessary, we must provide the best notification systems for consumers to take action.

This bill will take us one step closer to a safer more wholesome food supply system.

I hope that my colleagues will join us in support of this important bill.

By Ms. LANDRIEU (for herself, Mr. HAGEL, Ms. SNOWE, Mr. DODD, Mr. BAYH, Mr. KERRY, Mr. CASEY, Mr. WHITEHOUSE, and Mr. JOHNSON):

S. 2771. A bill to require the President to call a White House Conference on Children and Youth in 2010; to the Committee on Health, Education, Labor, and Pensions.

Ms. LANDRIEU. Mr. President, I am pleased today to introduce with Senator HAGEL legislation that would reinstate the White House Conference on Children and Youth. This Conference was originally created by President Theodore Roosevelt in 1909, and continued every 10 years through 1970. Despite funding in 1981 and reauthorization legislation in 1990, no conference has been held since that 1970 gathering. It is time to renew our commitment to America's children and resurrect the oldest White House Conference in U.S. history.

Similar to the White House Conference on Aging, this symposium would be the culmination of nationwide events held over a 2-year span. Just as with the first White House Conference, this summit would focus on child welfare issues. The legislation authorizes a conference to be held in 2010, and establishes a bipartisan, bicameral policy committee, including members selected by the next administration. To promote and inform the conference and to engage stakeholders, State and local events would be held around the country in 2009. These events and the conference would focus specifically on child welfare including the range of issues from prevention, intervention to permanency including reunification, kinship care and adoption. Participants would also include state officials, court and legal representatives, providers, children, tribal representatives and other parties affected by or involved with the child welfare system. By connecting these stakeholders through this conference, we can improve the lives of children throughout the country.

Previous conferences have led to major policy improvements in child welfare. The Children's Bureau was established after the first conference, and recommendations were made that deemphasized the institutionalization of children and encouraged the growth of adoption agencies. In 1919, the White House Conference initiated standards for child welfare, and ten years later it created a 19–point charter to address the needs of our children.

We look forward to comparable achievements from the conference in 2010, and hope that you will join with us in this effort.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2771

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''White House Conference on Children and Youth in 2010 Act''.

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—Congress finds the following:

(1) In 2005 there were over 3,000,000 reports of child abuse and neglect. Only 60 percent of the children from the substantiated reports received follow-up services, and 20 percent of such children were placed in foster care as a result of an investigation.

(2) Each year there are nearly 900,000 substantiated reports of child abuse and neglect.

(3) Each year approximately 60 percent of such substantiated reports are reports of neglect, 30 percent are physical or sexual abuse reports, and more than 20 percent are reports that involve other forms of abuse.

(4) Almost 500,000 children (including youth) were in foster care at the end of fiscal year 2004 and nearly 800,000 spent at least some time in foster care during the year.

(5) While 51,000 children are adopted from the foster care system each year, more than 117,000 children are waiting to be adopted.

(6) Each year approximately 22,000 youth leave the foster care system not because they have found permanent placements, but because they have reached the age at which foster care ends.

(7) The child welfare system includes State and local governments, tribal governments, child welfare agencies, child welfare caseworkers, private agencies, social workers, the courts, volunteer court-appointed special advocates, mental health and health care professionals, educators, and advocates.

(8) There is an overrepresentation of certain populations, including Native Americans and African-Americans, in the child welfare system.

(9) The number of children being raised by grandparents and other relatives is increasing and exceeds 6,000,000 children. The Government recognized that kinship care is a permanency option through the enactment of the Adoption and Safe Families Act of 1997.

(10) The State courts make key decisions in the lives of children involved in the child welfare system, including decisions about whether children have been victims of child abuse, whether parental rights should be terminated, and whether children should be reunified with their families, adopted, or placed in other settings.

(11) The child welfare system will never fully address its primary mission unless the courts are an integral and functioning component of a statewide system of care and protection.

(b) POLICY.—It is the policy of Congress that—

(1) the Government should work jointly with the States and their residents to develop recommendations and plans for action to meet the challenges and needs of children and families involved with the child welfare system, consistent with this Act;

(2) in developing such recommendations and plans, the persons involved should emphasize the role of the Government, State and local child welfare systems, State and local family court systems, child welfare advocates, guardians, and other key participants in such child welfare systems, with a goal of enhancing and protecting the lives and well-being of children and families who are involved with such child welfare systems; and

(3) Federal, State, and local programs and policies should be developed to reduce the number of children who are abused and neglected, to reduce the number of children in foster care, and to dramatically increase the number of children in permanent placements through family reunification, kinship placement, and adoption.

SEC. 3. AUTHORIZATION OF THE CONFERENCE.

(a) AUTHORITY TO CALL THE CONFERENCE.—The President shall call a White House Conference on Children and Youth in 2010 (referred to in this Act as ''the Conference''), to be convened not later than 18 months after the selection of the last member of the Policy Committee established in section 4, to encourage improvements in each State and local child welfare system, and to develop recommendations for actions to implement the policy set forth in section 2(b).

(b) PLANNING AND DIRECTION.—The Secretary shall plan, convene, and conduct the Conference in cooperation with the heads of other appropriate Federal entities, including the Attorney General, the Secretary of Education, and the Secretary of Housing and Urban Development.

(c) PURPOSES OF THE CONFERENCE.—The purposes of the Conference are—

(1) to identify the problems and challenges of child abuse and neglect, and the needs of the children and families affected by decisions made through the child welfare system;

(2) to strengthen the use of research-based best practices that can prevent child abuse and neglect with a special focus on younger children;

(3) to strengthen the use of research-based best practices that can increase placement permanency for children removed from their homes, including practices involving family reunification, kinship placement, and adoption;

(4) to promote the role of State and local family courts in each State child welfare system;

(5) to develop recommendations that will reduce the number of children who are in out-of-home care and who fail to leave foster care before the age of majority, and recommendations that will reduce the over representation of certain populations in the child welfare system;

(6) to examine the role of the Government in building an equal partnership with State, local, and tribal entities in order to assist with, and encourage, State, local, and tribal coordination;

(7) to develop such specific and comprehensive recommendations for State-level executive and legislative action as may be appropriate for maintaining and improving the well-being of children in such system; and

(8) to review the status of recommendations regarding child welfare made by previous White House conferences.

SEC. 4. POLICY COMMITTEE.

(a) ESTABLISHMENT.—There is established a Policy Committee, which shall be comprised of 17 members to be selected as follows:

(1) PRESIDENTIAL APPOINTEES.—Nine members shall be selected by the President and shall consist of—

(A) 3 members who are officers or employees of the Federal Government; and

(B) 6 members, who may be officers or employees of the Federal Government, with experience in the field of child welfare, including providers and children directly affected by the child welfare system.

(2) HOUSE OF REPRESENTATIVE APPOINTEES.—

(A) MAJORITY APPOINTEES.—Two members shall be selected by the Speaker of the House of Representatives, after consultation with the chairpersons of the Committee on Education and Labor, and the Committee on Ways and Means, of the House of Representatives.

(B) MINORITY APPOINTEES.—Two members shall be selected by the minority leader of the House of Representatives, after consultation with the ranking minority members of such committees.

(3) SENATE APPOINTEES.—

(A) MAJORITY APPOINTEES.—Two members shall be selected by the majority leader of the Senate, after consultation with the chairpersons of the Committee on Health, Education, Labor, and Pensions, and the Committee on Finance, of the Senate.

(B) MINORITY APPOINTEES.—Two members shall be selected by the minority leader of the Senate, after consultation with the ranking minority members of such committees.

(b) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Policy Committee. Any vacancy in the Policy Committee shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) VOTING; CHAIRPERSON.—

(1) VOTING.—The Policy Committee shall act by the vote of a majority of the members present.

(2) CHAIRPERSON.—The President shall select a chairperson from among the members of the Policy Committee. The chairperson may vote only to break a tie vote of the other members of the Policy Committee.

(d) DUTIES OF POLICY COMMITTEE.—

(1) MEETINGS.—The Policy Committee shall hold its first meeting at the call of the Secretary, not later than 30 days after the last member is selected. Subsequent meetings of the Policy Committee shall be held at the call of the chairperson of the Policy Committee.

(2) GENERAL DUTIES.—Through meetings, hearings, and working sessions, the Policy Committee shall—

(A) make recommendations to the Secretary to facilitate the timely convening of the Conference;

(B) submit to the Secretary a proposed agenda for the Conference not later than 90 days after the first meeting of the Policy Committee;

(C) determine the number of delegates to be selected in accordance with section 5 and the manner by which the delegates are to be selected in accordance with such section;

(D) select delegates for the Conference; and

(E) establish other advisory committees as needed to facilitate Conference participation of—

(i) professionals with direct experience providing services to children and families in the child welfare system; and

(ii) children and families in the child welfare system.

(e) POWERS OF THE POLICY COMMITTEE.—

(1) INFORMATION FROM FEDERAL AGENCIES.—The Policy Committee may secure directly from any Federal department or agency such information as the Policy Committee considers necessary to carry out this Act. Upon request of the chairperson of the Policy Committee, the head of such department or agency shall furnish such information to the Policy Committee.

(2) POSTAL SERVICES.—The Policy Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(f) PERSONNEL.—

(1) TRAVEL EXPENSES.—The members of the Council shall not receive compensation for the performance of services for the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Council. Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the voluntary and uncompensated services of members of the Council.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

SEC. 5. CONFERENCE DELEGATES.

To carry out the purposes of the Conference, the Secretary shall convene delegates for the conference, who shall be fairly balanced in terms of their points of view with respect to child welfare, without regard to political affiliation or past partisan activity, who shall include—

(1) the directors of child welfare systems of the States;

(2) members of the State and local family court systems, representatives of the State bar associations, and attorneys specializing in family law;

(3) elected officials of State and local governments; and

(4) advocates (including national and State organizations), guardians, experts in the field of child welfare, families and children (including youth) affected by the child welfare system, and the general public.

SEC. 6. CONFERENCE ADMINISTRATION.

(a) ADMINISTRATION.—In conducting and planning the Conference, the Secretary shall—

(1) request the cooperation and assistance of the heads of such other Federal entities as may be appropriate, including the detailing of personnel;

(2) furnish all reasonable assistance, including financial assistance, not less than 18 months before the Secretary convenes the Conference, to State child welfare systems, State and local family court systems, and other appropriate organizations, to enable them to organize and conduct State-level child welfare conferences in conjunction with and in preparation for participation in the Conference;

(3) prepare and make available for public comment a proposed agenda, for the Conference, that reflects to the greatest extent possible the major child welfare issues facing child welfare systems and the courts, consistent with the policy set forth in section 2(b);

(4) prepare and make available background materials that the Secretary determines to be necessary for the use of delegates to the Conference; and

(5) employ such additional personnel as may be necessary to carry out this Act without regard to provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(b) DUTIES.—In carrying out the Secretary's responsibilities and functions under this section, the Secretary shall ensure that—

(1) the conferences held under subsection (a)(2) will—

(A) be conducted so as to ensure broad participation of individuals and groups; and

(B) include conferences on Native Americans—

(i) to identify conditions that adversely affect Native American children in the child welfare system and to identify Native American families who are at risk of entering such system;

(ii) to propose solutions to ameliorate such conditions; and

(iii) to provide for the exchange of information relating to the delivery of services to Native American children in the child welfare system and to Native American families who are at risk of entering such system;

(2) the proposed agenda for the Conference under subsection (a)(3) is—

(A) published in the Federal Register not less than 180 days before the Conference is convened; and

(B) made available for public comment for a period of not less than 60 days;

(3) the final agenda for the Conference, prepared after the Secretary takes into consideration comments received under paragraph (2), is published in the Federal Register, and transmitted to the chief executive officers of the States, not later than 30 days after the close of the public comment period required by paragraph (2);

(4) the personnel employed under subsection (a)(5) are fairly balanced in terms of their points of view with respect to child welfare and are appointed without regard to political affiliation or past partisan activity;

(5) the recommendations of the Conference are not inappropriately influenced by any public official or special interest, but instead are the result of the independent and collective judgment of the delegates of the Conference; and

(6) before the Conference is convened—

(A) current and adequate statistical data (including decennial census data) and other information on the well-being of children in the United States; and

(B) such information as may be necessary to evaluate Federal programs and policies relating to children;

which the Secretary may obtain by making grants to or entering into agreements with, public agencies or nonprofit organizations, are readily available in advance of the Conference to the delegates.

SEC. 7. REPORT OF THE CONFERENCE.

(a) PROPOSED REPORT.—

(1) PREPARATION.—After consultation with the Policy Committee, the Secretary shall prepare a proposed report of the Conference containing—

(A) the results of the Conference, which shall include a statement of comprehensive coherent national policy on State child welfare systems (including the courts involved); and

(B) recommendations of the Conference for the implementation of such policy.

(2) PUBLICATION AND SUBMISSION.—The proposed report shall be published in the Federal Register, and submitted to the chief executive officers of the States, not later than 60 days after the Conference adjourns.

(b) RESPONSE TO PROPOSED REPORT.—The Secretary shall solicit recommendations about and other comments on the proposed report, to be submitted not later than 180 days after the publication of the report. The Secretary shall request that the chief executive officers of the States submit to the Secretary, not later than 180 days after receiving the proposed report, their views and findings on the proposed report.

(c) FINAL REPORT.—Not later than 90 days after receiving the comments, and the views and findings of the chief executive officers of the States, under subsection (b), the Secretary shall—

(1) prepare a final report of the Conference, which shall include—

(A) a statement of the policy and recommendations of the Conference;

(B) a compilation of the comments, and the views and findings of the chief executive officers of the States; and

(C)(i) the recommendations of the Secretary for a comprehensive coherent national policy on State child welfare systems (including the courts involved), after taking into consideration the comments, views, and findings; and

(ii) the recommendations of the Secretary for the administrative and legislative action necessary to implement the recommendations described in clause (i); and

(2) publish the final report in the Federal Register and transmit the report to the President and to Congress.

SEC. 8. DEFINITIONS AND REFERENCES.

(a) DEFINITIONS.—In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(2) STATE.—The term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Marianas.

(b) REFERENCES.—In this Act, a reference to a child welfare system of a State includes a reference to a child welfare system of a tribal government.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated $10,000,000 to carry out this Act.

(b) LIMITATION ON APPROPRIATIONS.—Authority provided in this Act to make expenditures or to enter into contracts under which the United States is obligated to make outlays shall be effective only to the extent that amounts are provided, and only to the extent of the amounts provided, in advance in appropriations Acts.

By Mr. LEAHY (for himself, Mr. HATCH, Mrs. FEINSTEIN, and Mr. SCHUMER):

S. 2774. A bill to provide for the appointment of additional Federal circuit and district judges, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today, I join with Senator HATCH to introduce a bipartisan bill to address the resource needs of our men and women on the Federal judiciary and people around the country by authorizing additional U.S. courts of appeals and district court judgeships. It has been 18 years since the last time a comprehensive judgeship bill was enacted to address the growth in the workload of the Federal judiciary by adding new Federal judgeships. That legislation established 11 additional circuit court judgeships and 61 permanent and 13 temporary district court judgeships.

Since 1990, case filings in our Federal appellate courts have increased by 55 percent and case filings on our district courts have risen by 29 percent. Without a comprehensive bill, Congress has proceeded to authorize only a few additional district court judgeships and extend temporary judgeships when it could. For instance, in 2002 we were able to provide for 15 new judgeships in the Department of Justice authorization bill. However no additional circuit court judgeships have been created since 1990 despite their increased workload.

In 2006, the weighted number of filings in district courts, which takes into account an assessment of case complexity, were 464 per judgeship, well above the Judicial Conference's standard. The same year, the national average circuit court caseload per three-judge panel approached the record number of 1,230 cases, recorded a year earlier.

Our Federal judges are working harder than ever, but in order to maintain the integrity of the Federal courts and the promptness that justice demands, judges must have a manageable workload. The bill that we are introducing today would add 12 permanent circuit court judgeships, 38 permanent district court judgeships, and convert five existing temporary judgeships into permanent positions. These additional judgeships would address the significant increase in caseloads that the Federal courts have seen over the nearly two decades since the last comprehensive judgeship bill was enacted. It is based on the recommendations of the Judicial Conference and its analysis of caseloads and needs.

Our bipartisan bill would also add 14 temporary district court judgeships, two temporary circuit court judgeships, and extend one existing temporary district court judgeship. These additional temporary judgeships allow Congress some flexibility with regard

to future judgeship needs. If caseloads continue to increase, Congress has the option to introduce legislation making permanent or renewing these temporary judgeships.

By providing that these new judgeships become effective the day after the inauguration of the next President, we attempt to insulate this effort from partisan politics.

This bill has the support of the Judicial Conference and Senators on both sides of the aisle. I thank Senators FEINSTEIN and SCHUMER for joining us in this effort. A comprehensive bill to respond to the increasing workload of our Federal judiciary is long overdue.

Mr. President, I ask unanimous consent that text of the bill be printed in the RECORD.

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

S. 2774

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Judgeship Act of 2008''.

SEC. 2. CIRCUIT JUDGES FOR THE CIRCUIT COURTS OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional circuit judge for the first circuit court of appeals;

(2) 2 additional circuit judges for the second circuit court of appeals;

(3) 2 additional circuit judges for the third circuit court of appeals;

(4) 1 additional circuit judge for the sixth circuit court of appeals;

(5) 2 additional circuit judges for the eighth circuit court of appeals; and

(6) 4 additional circuit judges for the ninth circuit court of appeals.

(b) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate, 2 additional circuit judges for the ninth circuit court of appeals. The first 2 vacancies arising on the court 10 years or more after judges are first confirmed to fill both temporary circuit judgeships created by this subsection shall not be filled.

(c) TABLES.—In order that the table contained in section 44 of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

"Circuits	Number of judges
District of Columbia	11
First	7
Second	15
Third	16
Fourth	15
Fifth	17
Sixth	17
Seventh	11
Eighth	13
Ninth	33
Tenth	12
Eleventh	12
Federal	12.''.

SEC. 3. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 4 additional district judges for the district of Arizona;

(2) 4 additional district judges for the central district of California;

(3) 4 additional district judges for the eastern district of California;

(4) 2 additional district judges for the northern district of California;

(5) 1 additional district judge for the district of Colorado;

(6) 4 additional district judges for the middle district of Florida;

(7) 2 additional district judges for the southern district of Florida;

(8) 1 additional district judge for the southern district of Indiana;

(9) 1 additional district judge for the district of Minnesota;

(10) 1 additional district judge for the western district of Missouri;

(11) 1 additional district judge for the district of Nebraska;

(12) 1 additional district judge for the district of New Mexico;

(13) 3 additional district judges for the eastern district of New York;

(14) 1 additional district judge for the western district of New York;

(15) 1 additional district judge for the district of Oregon;

(16) 1 additional district judge for the district of South Carolina;

(17) 1 additional district judge for the eastern district of Texas;

(18) 2 additional district judges for the southern district of Texas;

(19) 1 additional district judge for the western district of Texas;

(20) 1 additional district judge for the eastern district of Virginia; and

(21) 1 additional district judge for the western district of Washington.

(b) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the middle district of Alabama;

(2) 1 additional district judge for the district of Arizona;

(3) 1 additional district judge for the central district of California;

(4) 1 additional district judge for the northern district of California;

(5) 1 additional district judge for the district of Colorado;

(6) 1 additional district judge for the middle district of Florida;

(7) 1 additional district judge for the southern district of Florida;

(8) 1 additional district judge for the district of Idaho;

(9) 1 additional district judge for the northern district of Iowa;

(10) 1 additional district judge for the district of Nevada;

(11) 1 additional district judge for the district of New Jersey;

(12) 1 additional district judge for the district of New Mexico;

(13) 1 additional district judge for the district of Oregon; and

(14) 1 additional district judge for the district of Utah.

For each of the judicial districts named in this subsection, the first vacancy arising on the district court 10 years or more after a judge is first confirmed to fill the temporary district judgeship created in that district by this subsection shall not be filled.

(c) EXISTING JUDGESHIPS.—

(1) The existing judgeships for the district of Hawaii, the district of Kansas, and the eastern district of Missouri authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 104 Stat. 5089) as amended by Public Law 105–53, and the existing judgeships for the district of Arizona and the district of New Mexico authorized by section 312(c) of the 21st Century Department of Justice Appropriations Authorization Act (Public Law 107–273, 116 Stat. 1758), as of the effective date of this Act, shall be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(2) The existing judgeship for the northern district of Ohio authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650, 104 Stat. 5089) as amended by Public Law 105–53, as of the effective date of this Act, shall be extended. The first vacancy in the office of district judge in this district occurring 20 years or more after the confirmation date of the judge named to fill the temporary judgeship created by section 302(c) shall not be filled.

(d) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (c) of this section, such table is amended to read as follows:

"Districts	Judges
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	17
Arkansas:	
Eastern	5
Western	3
California:	
Northern	16
Eastern	10
Central	31
Southern	13
Colorado	8
Connecticut	8
Delaware	4
District of Columbia	15
Florida:	
Northern	4
Middle	19
Southern	19
Georgia:	
Northern	11
Middle	4
Southern	3
Hawaii	4
Idaho	2
Illinois:	
Northern	22
Central	4
Southern	4
Indiana:	
Northern	5
Southern	6
Iowa:	
Northern	2
Southern	3
Kansas	6
Kentucky:	
Eastern	5
Western	4
Eastern and Western	1
Louisiana:	
Eastern	12
Middle	3
Western	7
Maine	3
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	8
Mississippi:	
Northern	3

"Districts	Judges
Southern	6
Missouri:	
Eastern	7
Western	6
Eastern and Western	2
Montana	3
Nebraska	4
Nevada	7
New Hampshire	3
New Jersey	17
New Mexico	8
New York:	
Northern	5
Southern	28
Eastern	18
Western	5
North Carolina:	
Eastern	4
Middle	4
Western	4
North Dakota	2
Ohio:	
Northern	11
Southern	8
Oklahoma:	
Northern	3
Eastern	1
Western	6
Northern, Eastern, and Western	1
Oregon	7
Pennsylvania:	
Eastern	22
Middle	6
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	11
South Dakota	3
Tennessee:	
Eastern	5
Middle	4
Western	5
Texas:	
Northern	12
Southern	21
Eastern	8
Western	14
Utah	5
Vermont	2
Virginia:	
Eastern	12
Western	4
Washington:	
Eastern	4
Western	8
West Virginia:	
Northern	3
Southern	5
Wisconsin:	
Eastern	5
Western	2
Wyoming	3.''.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this Act.

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—This Act (including the amendments made by this Act) shall take effect on January 21, 2009.

(b) COORDINATION RULE.—The amendments made by this Act shall take effect after the amendment made by section 509(a)(2) of the Court Security Improvement Act of 2007 (Public Law 110–177; 121 Stat 2543).

MR. HATCH. Mr. President, Americans are blessed to have the best and most independent judicial system in the world. In our constitutional framework, Congress has responsibility to both make the laws and ensure that the judiciary tasked with interpreting and applying those laws has the appropriate resources. This includes addressing the staffing and compensation needs of the judicial branch, and we should strive to do so without political gambles or speculation about the outcome of a Presidential election.

For that reason, when I chaired the Judiciary Committee I sponsored and cosponsored judgeship bills in 2000 when Bill Clinton was President and in the 108th Congress under the current President. And that is why I am cosponsoring this bill with Senator LEAHY, the current Judiciary Committee, chairman. It is based on the judicial conference's assessment of their needs, not on backroom political deals, and it reflects the changes to the allocation of appeals court seats made in S. 378, the Court Security Improvement Act, which I also cosponsored.

By Mr. KERRY (for himself, Mr. OBAMA, Mr. HARKIN, and Mrs. CLINTON):

S. 2775. A bill to amend the Internal Revenue Code of 1986 and the Social Security Act to treat certain domestically controlled foreign persons performing services under contract with the United States Government as American employers for purposes of certain employment taxes and benefits; to the Committee on Finance.

Mr. KERRY. Mr. President, today Representatives Ellsworth and Emanuel and Senator OBAMA and I are introducing the Fair Share Act of 2008 which ends the practice of U.S. Government contractors setting up shell companies in foreign jurisdictions to avoid payroll taxes. On March 6 2008, Farah Stockman of the Boston Globe reported that Kellogg, Brown and Root Inc. KBR, has avoided payroll taxes by hiring workers through shell companies in the Cayman Islands. The article estimates that hundreds of millions of dollars in payroll taxes have been avoided a disturbing, yet not all too surprising discovery.

KBR is an American engineering and construction company, formerly a subsidiary of Halliburton, based in Houston, TX. Throughout its history, KBR and its predecessors have won numerous contracts with the United States military. In recent years, however, many of these contracts have been called into question based on everything from wasteful spending to mismanagement and lack of competition. The evasion of payroll taxes is yet one more serious misstep.

The Fair Share Act of 2008 will end the practice of U.S. Government contractors setting up shell companies in foreign jurisdictions to avoid payroll taxes. The legislation amends the Internal Revenue Code and the Social Security Act to treat foreign subsidiaries of U.S. companies performing services under contract with the U.S. Government as American employers for the purpose of Social Security and Medicare payroll taxes. The legislation will apply to foreign subsidiaries of a U.S. parent. The degree of common ownership applied by the legislation is 50 percent, meaning that the U.S. parent would have to own more than 50 percent of the subsidiary.

In addition, the legislation addresses the situation in which a U.S. subsidiary of a foreign corporation subcontracts with its foreign subsidiary to perform a contract with the U.S Government. In this situation, the legislation would apply to wages paid by the foreign subsidiary to its U.S. employees. The legislation does not address the situation in which the foreign parent contracts directly with the U.S. Government. Present law will continue to apply to totalization agreements. The legislation applies to services performed after the date of enactment.

The bottom line is this: Federal contractors should not be allowed to use tax loopholes to avoid paying U.S. Medicare and Social Security taxes on behalf of their American employees working in Iraq. Furthermore, KBR should not have a competitive advantage over its U.S. competitors because it sets up sham corporations to avoid paying its fair share of U.S. payroll taxes. Failing to contribute to Social Security and Medicare thousands of times over is not shielding the taxpayers they claim to protect, it is costing our citizens.

At a time when as much as $300 billion per year in taxes goes uncollected by the government, and by some estimates more than a third of that money may be related to corporations using offshore tax havens, we should close every loophole possible.

Just last week, the Government Accountability Office, GAO, went to the Caymans to investigate U.S. companies' offshore operations. The GAO went to look at the buildings where U.S. corporations locate shell corporations. These corporations are often nothing more than a computer file. According to the Boston Globe, the KBR Cayman Island corporations do not even have an office or a phone number. I commend Senators BAUCUS and GRASSLEY for requesting this investigation.

As a member of the Finance Committee, I will continue working to close corporate loopholes that are fueled by greed. I urge my colleagues to support ending this egregious practice.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2775

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Share Act of 2008''.

SEC. 2. CERTAIN DOMESTICALLY CONTROLLED FOREIGN PERSONS PERFORMING SERVICES UNDER CONTRACT WITH UNITED STATES GOVERNMENT TREATED AS AMERICAN EMPLOYERS.

(a) FICA TAXES.—Section 3121 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

''(z) TREATMENT OF CERTAIN FOREIGN PERSONS AS AMERICAN EMPLOYERS.—

''(1) IN GENERAL.—If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated for purposes of this chapter as an American employer with respect to such services performed by such employee.

''(2) DOMESTICALLY CONTROLLED GROUP OF ENTITIES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'domestically controlled group of entities' means a controlled group of entities the common parent of which is a domestic corporation.

''(B) CONTROLLED GROUP OF ENTITIES.—The term 'controlled group of entities' means a controlled group of corporations as defined in section 1563(a)(1), except that—

''(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein, and

''(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

''(3) LIABILITY OF COMMON PARENT.—In the case of a foreign person who is a member of any domestically controlled group of entities, the common parent of such group shall be jointly and severally liable for any tax under this chapter for which such foreign person is liable by reason of this subsection.

''(4) CROSS REFERENCE.—For relief from taxes in cases covered by certain international agreements, see sections 3101(c) and 3111(c).''.

(b) SOCIAL SECURITY BENEFITS.—Subsection (e) of section 210 of the Social Security Act (42 U.S.C. 410(e)) is amended—

(1) by striking ''(e) The term'' and inserting ''(e)(1) The term'',

(2) by redesignating paragraphs (1) through (6) as subparagraphs (A) through (F), respectively, and

(3) by adding at the end the following new paragraph:

''(2)(A) If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated for purposes of this chapter as an American employer with respect to such services performed by such employee.

''(B) For purposes of this paragraph—

''(i) The term 'domestically controlled group of entities' means a controlled group of entities the common parent of which is a domestic corporation.

''(ii) The term 'controlled group of entities' means a controlled group of corporations as defined in section 1563(a)(1) of the Internal Revenue Code of 1986, except that—

''(I) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein, and

''(II) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563 of such Code.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3) of such Code) by members of such group (including any entity treated as a member of such group by reason of this sentence).''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to services performed after the date of the enactment of this Act.

By Mr. MARTINEZ (for himself, Mr. MENENDEZ, Mr. NELSON of Florida, Mr. ENSIGN, and Mr. COLEMAN):

S. 2777. A bill to award a Congressional Gold Medal to Dr. Oscar Elias Biscet, in recognition of his courageous and unwavering commitment to democracy, human rights, and peaceful change in Cuba; to the Committee on Banking, Housing, and Urban Affairs.

Mr. MARTINEZ. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2777

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) Dr. Oscar Elias Biscet was born on July 20, 1961, in Havana, Cuba;

(2) Dr. Biscet is married to fellow democracy advocate, Elsa Morejon Hernandez, and he has 2 children;

(3) Dr. Biscet is currently serving a 25-year prison sentence for allegedly committing crimes against the sovereignty of the Cuban regime;

(4) in 1997, Dr. Biscet founded the Lawton Foundation for Human Rights, one of the first independent civic groups in Havana, which promotes the study, defense, and denunciation of human rights violations inside Cuba and wherever the rights and liberties of human beings are disregarded;

(5) as a physician, Dr. Biscet denounced the double-standards and systematic repression of the Cuban National Health Care System, and as a result he was forbidden from practicing medicine;

(6) on February 27, 1999, Dr. Biscet was imprisoned for 3 years, after hanging the national flag sideways at a press conference;

(7) although Cuban independence and democracy advocates have always used this statement as a sign of civil disobedience, the regime nonetheless accused Dr. Biscet of insulting the nation's symbols, public disorder, and inciting criminal activity;

(8) once released in 2002, and unable to practice medicine, Dr. Biscet engaged in organizing seminars on the Universal Declaration of Human Rights;

(9) on December 6, 2002, on his way to one such meeting, he and several of the seminar's participants were beaten and arrested;

(10) on April 7, 2003, Dr. Biscet was sentenced to 25 years in prison and sent to a special state security prison, Kilo Cinco y Medio in Pinar Del Rio province;

(11) Dr. Biscet has declared himself a ''plantado'', a political prisoner who refuses to undertake ideological ''reeducation'' or wear a common prisoner's uniform and therefor remains in Cuba's political gulag;

(12) on November 5, 2007, President Bush recognized Dr. Biscet and presented him (in absentia) with the Presidential Medal of Freedom, stating that ''Dr. Biscet is a champion in the fight against tyranny and oppression. Despite being persecuted and imprisoned for his beliefs, he continues to advocate for a free Cuba in which the rights of all people are respected.''; and

(13) Dr. Biscet is a follower of the Dalai Lama, Ghandhi, and Martin Luther King, and continues to fight every day to bring democracy and justice to Cuba.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall make appropriate arrangements for the presentation, on behalf of the Congress, of a gold medal of appropriate design, to Dr. Oscar Elias Biscet in recognition of his courageous and unwavering commitment to democracy, human rights, and peaceful change in Cuba.

(b) DESIGN AND STRIKING.—For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury (referred to in this Act as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

The Secretary may strike and sell duplicates in bronze of the gold medal struck pursuant to section 2, under such regulations as the Secretary may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

SEC. 4. STATUS OF MEDALS.

(a) NATIONAL MEDALS.—The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

(b) NUMISMATIC ITEMS.—For purposes of sections 5134 and 5136 of title 31, United States Code, all medals struck under this Act shall be considered to be numismatic items.

SEC. 5. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF SALE.

(a) AUTHORITY TO USE FUND AMOUNTS.—There is authorized to be charged against the United States Mint Public Enterprises Fund such amounts as may be necessary to pay for the costs of the medals struck pursuant to this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals authorized under section 3 shall be deposited into the United States Mint Public Enterprises Fund.

By Mr. BINGAMAN (for himself, Mr. DOMENICI, Mr. SALAZAR, Mr. ALLARD, and Mr. BENNETT):

S. 2779. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects: to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise to introduce a bill important to public health and safety and the environment in the West. This legislation addresses a recent interpretation by the Department of the Interior, DOI, which restricts the ability of states to use certain funds under the Abandoned Mine

Land, AML, Program authorized by the Surface Mining Control and Reclamation Act, SMCRA, for non-coal mine reclamation.

The Tax Relief and Health Care Act of 2006 contained amendments to SMCRA reauthorizing collection of an AML fee on coal produced in the U.S. and making certain modifications to the AML program. Under this program, which is administered by DOI, funds are expended to reclaim abandoned mine lands, with top priority for protecting public health, safety, general welfare, and property and restoration of land and water resources adversely affected by past mining practices. The program is largely directed to abandoned coal mine reclamation, but under section 409 of SMCRA, limited funds have been available to address non-coal mine sites.

Unfortunately, the Department of the Interior has interpreted the amendments in a manner that limits the ability of western states to use certain funds under SMCRA to address significant problems relating to non-coal abandoned mines, despite the fact that these funds had previously been available for these purposes.

Section 409 of SMCRA, provides that states may address public health and safety hazards at abandoned mine sites, both coal and non-coal. Western states such as New Mexico, Colorado, and Utah, have prioritized the use of AML funds to undertake the most pressing reclamation work on both coal and non-coal mine sites. While activities on non-coal sites have consumed a relatively insignificant portion of the funding provided for the overall AML program, the results in terms of public health and safety in these states is considerable, and there is significant work yet to be done. For example, New Mexico alone has over 15,000 remaining mine openings with a vast majority of these being non-coal. All AML-related fatalities in the State in the last few decades have been at non-coal mine sites.

I disagree with this interpretation by DOI. This result was not the intention of those of us working on the SMCRA amendments, and I believe the interpretation is in error. First, OSM's interpretation disregards the fact that section 409 was left unamended by the Congress. Furthermore, this interpretation is inconsistent with assurances repeatedly given to us by OSM during the consideration of the legislation that non-coal work could continue to be undertaken with these AML funds. Finally, the interpretation has the unacceptable result of requiring states to devote funds to low priority coal sites while leaving dangerous non-coal sites unaddressed.

The bill that I am introducing today would correct this problem by modifying the language of SMCRA to clarify that the funding would be available for noncoal reclamation as it was prior to the passage of the amendments in 2006. Under the bill, western, non-certified States could continue to use the payments comprising their so-called previously unappropriated state share balances for noncoal reclamation.

I hope that my colleagues will support this legislation, which has important implications for abandoned mine clean-up in the West.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2779

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ABANDONED MINE RECLAMATION.

(a) LIMITATION ON FUNDS.—Section 409(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239(b)) is amended by inserting ''or section 411(h)(1)'' after ''section 402(g)''.

(b) USE OF FUNDS.—Section 411(h)(1)(D)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(h)(1)(D)(ii)) is amended by inserting ''or 409'' after ''section 403''.

By Ms. STABENOW (for herself and Mr. BUNNING):

S. 2781. A bill to amend title XVIII of the Social Security Act to increase the per resident payment floor for direct graduate medical education payments under the Medicare program; to the Committee on Finance.

Ms. STABENOW. Mr. President, I wish to discuss a critical infrastructure issue facing our Nation. As our population ages, we will need more health care professionals. We are already seeing shortages in critical areas such as nursing.

The Council on Graduate Medical Education, COGME, has also strongly advised that we need to train more physicians. COGME recommends that the number of physicians entering residency programs increase by 3,000 over the next 10 years to partially remedy an anticipated shortfall of 85,000 physicians by 2020.

Yet for many of my teaching hospitals, there is a problem in how they are reimbursed through the Medicare Program for training the next generation of doctors. Their ''graduate medical education'' reimbursement GME, is based on data collected over 30 years ago that no longer reflects current costs and increasing needs. Over 30 Michigan teaching hospitals lose more than $18 million a year as a result of Medicare's outdated policy. Insufficient funding makes it very difficult for hospitals to train a workforce sufficient to care for the growing Medicare population.

Congress has recognized that this formula has caused unfairness in GME payments. In 1999, Congress set a minimum payment level at 70 percent of the national average, and in 2000, Congress raised the minimum payment level again to 85 percent of the national average.

The bill I am introducing today with my colleague, Senator BUNNING, merely raises the floor again to 100 percent of the national average over a 3-year period. Teaching hospitals could use the additional money to make up shortfalls or pay for additional residents to train.

I am pleased to have the support of the American Osteopathic Association as well as many of Michigan's premier medical schools and academic medical centers.

I look forward to working with my colleagues on ensuring that our Nation's teaching hospitals are the envy of the world and that we have the physician workforce we need for the future.

Mr. President, I ask unanimous consent that letters of support be printed in the RECORD.

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

STATEWIDE CAMPUS SYSTEM, MICHIGAN STATE UNIVERSITY COLLEGE OF OSTEOPATHIC MEDICINE,
March 10, 2008.

Hon. DEBBIE A. STABENOW,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR STABENOW: The Statewide Campus System at Michigan State University is a consortium of 26 hospitals in Michigan. Its primary purpose is to provide medical education to nearly 1,300 interns, residents, and fellows within our state. Support for the training of these physicians comes primarily from federal financing through the Medicare program. We are acutely aware how our training institutions are disadvantaged by the current operations of the DGME payment system. Many of our hospitals receive less than the national average from Medicare that is used to offset medical education. Public demands for increased patient safety and competency assessment of procedural skills performed by residents are unfunded mandates that we are now challenged to provide.

We are aware that Congress has addressed this issue in piecemeal fashion in moving the reimbursement level from 70 percent to 85 percent of the locally adjusted national average. Congress further recognized in the Medical Modernization Act of 2003 by adding a provision that the redistributed postdoctoral positions be reimbursed at 100 percent of the national average. The next logical step is to level the playing field so that teaching institutions can be compensated in accordance with their regionally adjusted average and use the additional funds to expand our educational commitments to residents.

The Statewide Campus System is supportive of your efforts to introduce legislation that would increase Medicare's Direct Medical Educational payments at 100 percent for those hospitals whose historical costs are less than the national average. We welcome and endorse legislation that has the same impact sponsored in the 109th Congress, S. 2289/H.R. 4371.

Sincerely yours,

MARK CUMMINGS, PhD,
Associate Dean, SCS.

UNIVERSITY OF MICHIGAN HEALTH SYSTEM,
March 11, 2008.

Hon. DEBBIE A. STABENOW,
U.S. Senate, Hart Senate Office Bldg., Washington, DC.

DEAR SENATOR STABENOW: On behalf of Michigan's hospitals disadvantaged under Medicare's Direct Graduate Medicare Education payment system, we strongly endorse

your legislation to address the longstanding inequities for graduate medical education to be introduced on the Senate floor on March 13, 2008.

As you know, Medicare's formula for paying hospitals that operate teaching programs is based on data from the early 1980s which are significantly below current costs and increasing needs. Insufficient funding makes it very difficult for hospitals to train a workforce sufficient to care for the growing Medicare population.

In our state, 34 teaching hospitals lose more than $18 million a year as a result of Medicare's out-dated policy. More than 600 hospitals nationwide also receive less than the national average payment from Medicare for the direct costs of providing graduate medical education.

Congress has addressed this problem over the past 7 years in various incremental ways. In 2000, Congress included provisions in the ''Medicare, Medicaid and SCHIP Benefit Improvement and Protection Act'' (BIPA) to raise the floor for direct graduate medical education payments from 70 percent of the locality adjusted national average to 85 percent. In the Medicare Modernization Act of 2003, Congress again recognized the flaws in Medicare's payments to teaching hospitals by including a provision requiring that any resident positions redistributed to other hospitals be reimbursed at 100 percent of the national average.

The legislation would continue on this important path by increasing Medicare's Direct Graduate Medical Education (DGME) payments to hospitals to 100 percent of the national average per resident for facilities whose historical costs are less than the national average. In short, Medicare should pay for the average cost of operating a training program so no hospitals receive less than Medicare's fair share of the costs of operating a medical education program. We appreciate your leadership on behalf of the teaching hospitals, the physicians we train, and the patients we serve.

Sincerely,

DOUGLAS STRONG,
Chief Executive Officer, UMHHC.

AMERICAN OSTEOPATHIC ASSOCIATION,
Washington, DC, March 4, 2008.

Hon. DEBBIE STABENOW,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Hon. JIM BUNNING,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS STABENOW AND BUNNING: On behalf of the 61,000 osteopathic physicians represented by the American Osteopathic Association (AOA), I am pleased to inform you of our support for your legislation, which would amend title XVIII of the Social Security Act to increase the per resident payment floor for direct graduate medical education payments under the Medicare program. We applaud your leadership and strongly support your efforts.

Numerous academic and advisory bodies, including the Council on Graduate Medical Education (COGME), have issued reports showing that there will be an inadequate number of physicians to meet patient demands by the year 2020. This shortage of physicians comes at a time when the Nation's senior population and the number of Medicare beneficiaries is growing at a rapid rate. While the precise number of physicians needed is debatable, there is little doubt that the Nation's graduate medical education system limits our ability to meet the future physician workforce needs.

Currently, one in five medical school students in the United States is enrolled in a college of osteopathic medicine. The Nation's colleges of osteopathic medicine currently graduate 3,000 new osteopathic physicians annually. This number will increase to approximately 3,500 in 2008 and is projected to be greater than 4,500 by 2013.

Please be assured that we are committed to educating and training quality physicians that are capable of meeting the health care needs of the nation. However, we must increase the payment floor for direct graduate medical education payments.

Again, thank you for your leadership on this issue. The AOA and our members stand ready to assist you in securing the enactment of this important legislation. Please do not hesitate to call upon the AOA for assistance as you move forward on this issue.

Sincerely,

PETER B. AJLUNI, DO,
President.

Hon. DEBBIE A. STABENOW,
U.S. Senate, Hart Senate Office Bldg., Washington, DC.

Hon. JIM BUNNING,
U.S. Senate, Hart Senate Office Bldg., Washington, DC.

SENATORS STABENOW AND BUNNING: On behalf of the Coalition for DGME Fairness, thank you very much for introducing direct graduate medical education (DGME) legislation.

We stand together in strong support of your legislation so that we can continue to train a workforce sufficient to care for the growing Medicare population. Medicare pays less than its fair share for the costs of educating doctors in more than 600 hospitals across the country.

Your legislation would address the outdated methodology and longstanding inequity by increasing the Direct Graduate Medical Education (DGME) payment—for hospitals whose historical costs are less than the national average—to 100 percent of the national average per resident amount. Medicare pays hospitals for operating teaching programs based on costs reported in the early 1980s. These payments bear little, if any, relationship to the actual cost of operating training programs in the 21st century.

Twice before (1999 and 2001), Congress made incremental improvements in DGME payments for these hospitals, implementing a floor at 70 percent and then raising it to 85 percent of the national average. In the Medicare Modernization Act of 2003, Congress again recognized the flaws in Medicare's payments to teaching hospitals by requiring that unused residency positions redistributed to other hospitals be paid 100 percent of the national average. This legislation would complete Congress's work to address this inequity.

On behalf of our physicians, hospitals, and the patients we serve, we commit to work diligently with you to see this legislation enacted. If you have any further questions or need to get in touch with the coalition please contact Peggy Tighe, Partner at Strategic Health Care at 202–266–2600 or at peggy.tighe@shcare.net.

Sincerely,

COALITION FOR DGME FAIRNESS.

Enclosure.

ALABAMA

Huntsville Hospital; University of Alabama.

ARKANSAS

Crittenden Memorial Hospital.

CALIFORNIA

Cedars-Sinai Medical Center; Loma Linda University Medical Center; Pacific Hospital Long Beach; Stanford Hospital; UCLA Medical Center; UC San Francisco Medical Center; University of CA Davis Medical Center; UCSD Medical Center; UCI Medical Center; UCLA Neuropsychiatric Hospital.

CONNECTICUT

Bridgeport Medical Center; Danbury Hospital; Hospital of St. Raphael; Saint Francis Hospital & Medical Center; Yale New Haven Hospital.

DISTRICT OF COLUMBIA

Georgetown University Hospital.

FLORIDA

Bayfront Medical Center; H. Lee Moffit Cancer Center; Tampa General Hospital; Westchester General Hospital.

ILLINOIS

Memorial Medical Center; Mercy Hospital & Medical Center; Northwestern Memorial Hospital; St. Johns Hospital.

INDIANA

Ball Memorial Hospital.

KANSAS

University of Kansas Hospital.

KENTUCKY

Jewish Hospital; St. Mary's Mercy Medical Center; University of Louisville; University of Kentucky Hospital.

MASSACHUSETTS

Mount Auburn Hospital; Tufts-New England Medical Center.

MAINE

Maine Medical Center.

MICHIGAN.

Botsford General Hospital; Genesys Regional Medical Center; Henry Ford Bi-County Hospital; Henry Ford Wyandotte; Ingham Regional Medical Center; Mount Clemens General Hospital; POH Medical Center; St. Joseph Mercy Hospital; University of Michigan Health System.

MINNESOTA

St. Mary's Medical Center.

MISSOURI

Des Peres Hospital; Freeman Health; St. Luke's.

NORTH CAROLINA

Duke University Health System.

NORTH DAKOTA

Trinity Health.

NEW JERSEY

Monmouth Medical Center; Newark Beth Israel Medical Center; Saint Barnabas Medical Center; UMDNJ—University Hospital; Union Hospital.

OHIO

Cleveland Clinic Hospital; Clinton Memorial Hospital; Doctors Hospital; Fairview Hospital; Hillcrest Hospital; Forum Health Western Reserve; James Cancer Hospital; Medical University of Ohio; Ohio State University Hospital; Riverside Methodist; Southern Ohio Medical Center; South Pointe Hospital; St. Elizabeth Health Center; St. Joseph Regional Health Center; The University of Toledo; University Hospitals.

OKLAHOMA

Hillcrest Medical Center; Oklahoma State Univ. Medical Center; St. Anthony Hospital.

PENNSYLVANIA

Lancaster General Hospital; Lehigh Valley Hospital; Memorial Hospital; Millcreek Community Hospital; Robert Parker Hospital.

RHODE ISLAND

Miriam Hospital; Rhode Island Hospital.

TEXAS

JPS Health Network; Memorial Hermann Hospital System; St. Josephs, Ryan.

UTAH

Univ. of Utah Hospitals and Clinics.

WISCONSIN

Gundersen Lutheran; Univ. of Wisconsin Hospitals & Clinics.

Mr. BUNNING. Mr. President, I am proud to be introducing legislation today with Senator STABENOW that will benefit many of the teaching hospitals across the Nation, including 20 facilities in the Commonwealth of Kentucky.

Teaching hospitals play a critical role in educating, inspiring, and preparing our young doctors to meet the challenges of their new profession. Although necessary, this training adds to the cost of patient care. That is why Medicare pays these hospitals for its share of cost of training new physicians through payments known as direct graduate medical education payments—or DGME payments.

Unfortunately, there is some inequity in how DGME payments are calculated. The legislation we are introducing today takes steps to adequately reimburse all hospitals for the cost of training new physicians.

Teaching hospitals initially reported their direct costs to the Department of Health and Human Services in the mid-1980s. These reported amounts are now the basis for which each teaching hospital is reimbursed.

Unfortunately, there was a disparity in the types of costs each hospital reported, which has lead to large variations in payments between hospitals. Hospitals are also being reimbursed on data that is 20 years old.

To help rectify this problem, in 1999 Congress established a floor for calculating Medicare payments for DGME at 70 percent of the national average. In 2001, Congress raised the floor to 85 percent of the national average.

The legislation Senator STABENOW and I are introducing today would bring all of Medicare's DGME hospitals up 100 percent of the national average over a 3-year period. This would affect about 600 hospitals across the Nation that are currently being reimbursed below the national average, including the 20 in Kentucky.

I am glad we are introducing this legislation today and hope my colleagues can take a close look at it. Adequately paying our teaching hospitals is critically important, and this bill would benefit many hospitals across the country.

By Mr. HARKIN (for himself, Mrs. FEINSTEIN, and Mr. KENNEDY):

S. 2784. A bill to amend the Federal Food, Drug and Cosmetic Act to extend the food labeling requirements of the Nutrition Labeling and Education Act of 1990 to enable customers to make informed choices about the nutritional content of standard menu items in large chain restaurants; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, today I am introducing a bill, the Menu Education and Labeling Act, on behalf of myself and my colleagues, Ms. FEINSTEIN of California, and Mr. KENNEDY of Massachusetts.

Poor nutrition and obesity are a major public health problem in the U.S. The issue is far from merely cosmetic. It is medical and economic. Diet-related disease are prevalent in the U.S. Cardiovascular disease, which is the leading cause of death in the U.S., is clearly linked to poor diets. Type-2 diabetes, results in amputation, blindness, and premature death.

Diet is also clearly associated with rising rates of overweight and obesity. More than 65 percent of American adults are overweight, and more than 30 percent are clinically obese. We lead the world in this dubious distinction, which is growing worse. Increasingly the problem starts in childhood. According to the Institute of Medicine, since 1963, obesity rates have quadrupled among older children ages 6 to 11 years, and tripled for adolescents between the ages of 12 and 19. If we do not change course, kids attending school today will be the first generation in American history to live a shorter lifespan than their parents

The obesity epidemic has far-reaching consequences. Overweight people have an increased risk of diabetes, cardiovascular disease, cancers and other illnesses. Sixty percent of overweight youth already have at lest one risk factor for heart disease, which is the leading cause of death in the U.S. Obesity also causes or contributes to $117 billion a year in health care and related costs, more than half borne by taxpayers.

There is no single solution to the complex problem of poor nutrition and diet-related disease, but we must start taking meaningful steps to address this growing problem by giving people the tools necessary to consume healthier diets. The legislation that we are introducing today will extend nutrition labeling beyond packaged foods to include foods at chain restaurants with 20 or more locations, as well as food in vending machines. This common-sense idea will give consumers a needed tool to make wiser choices and live healthier lives.

In 1990, Congress passed the Nutrition Labeling and Education Act, NLEA, requiring food manufacturers to provide nutrition information on nearly all packaged foods. The impact has been tremendous. Not only do nearly three-quarters of adults use the food labels on packaged foods, but studies indicate that consumers who read labels have healthier diets.

American adults and children now consume a third of their calories at restaurants and nutrition and health experts say that rising caloric consumption and growing portion sizes are causes of obesity. However, restaurants were excluded from the Nutrition Labeling and Education Act. Consumers say that they would like nutrition information provided when they order their food at restaurants, yet, while they have good nutrition information in supermarkets, at restaurants they can only guess.

Similarly, vending machine food sales also play a large role in contributing to the diets of Americans. Over the last three decades vending machine sales have shot up 85 percent after inflation. Most vending machine sales include foods of low nutritional value.

The Menu Education and Labeling Act will require fast-food and other chain restaurants to provide point of sale information on calories, saturated fat, trans fat, and sodium and will require point of sale labeling of calories on foods sold in vending machines.

I would also like to note that last night, one of the true lions of the Senate, my old friend Howard M. Metzenbaum from Ohio, passed away. Senator Metzenbaum was a good friend and a great senator. One of his great achievements in the Senate is that he was the author of and the driving force behind the Nutrition Education Labeling Act, which first established nutrition labeling for packaged foods. The bill that we are introducing today builds upon Senator Metzenbaum's work on nutrition labeling, and in honor of his work and his distinguished career, I am naming this bill after him.

Let there be no doubt: poor nutrition in America is indeed an epidemic, and it is continuing to grow. This is a public health crisis and we must address it. Although this bill alone will not end poor nutrition or halt rising obesity in its tracks, it provides consumers with an important tool with which to make better choices about the food that they and their children consume.

By Mr. GRASSLEY:

S. 2786. A bill to amend title XVIII of the Social Security Act to improve access to health care under the Medicare program for beneficiaries residing in rural areas; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I am pleased to introduce the Medicare Rural Health Access Improvement Act of 2008.

The purpose of this legislation is to continue ongoing efforts to ensure that Americans in rural areas have access to health care services. Much has been done in the past to improve access to rural providers such as hospitals and doctors. Much more still needs to be done.

I hold town meetings in each of the 99 counties in the great State of Iowa every year. As many know, Iowa is largely a rural State, and a significant concern that I consistently hear during these meetings is the difficulty my constituents experience in accessing health care services. As the former chairman and currently the ranking member of the Finance Committee, it has, therefore, been a priority for me to improve the availability of health care in rural areas.

In Iowa, as in many rural areas across the country, hospitals are often

not only the sole provider of health care in rural areas, but also employers and purchasers in the community. Moreover, the presence of a hospital is essential for purposes of economic development because businesses check to see if a hospital is in the community in which they might set up shop. As you can see, it is vital that these institutions are able to keep their doors open.

In previous legislation, Congress has been able to improve the financial viability of rural hospitals. For instance, the creation and subsequent improvements to the Critical Access Hospital designation has greatly improved the financial health of certain small rural hospitals and ensured that community residents have access to health care.

However, there are still a group of rural hospitals that need help. I am referring to what are known as ''tweener'' hospitals, which are too large to be Critical Access Hospitals, but too small to be financially viable under the Medicare hospital prospective payment systems. These facilities are struggling to stay afloat despite their tireless efforts. Like in many communities across the country, the staff of tweener hospitals and their community residents take great pride in the quality of care at these facilities. I have heard countless stories of the exemplary work tweener hospitals in Iowa perform not only as providers of essential health care, but also as responsible members of their communities. It is for this reason that many provisions in this bill are intended to improve the financial health of tweener hospitals and ensure that people have access to health care.

Most tweener hospital are currently designated as Medicare Dependent Hospitals and Sole Community Hospitals under the Medicare program. There are provisions, both temporary and permanent, included in this bill that would improve Medicare payments for both types of hospitals. This includes improvements to the payment methodologies so that inpatient payments to these facilities would better reflect the costs they incur in providing care. Improvements are also proposed in this bill to Medicare hospital outpatient payments for both Medicare Dependent Hospitals and Sole Community Hospitals so they would both share the benefit of hold harmless payments and add-on payments.

Also, a major driver of the financial difficulties that tweener hospitals face is the fact that many have relatively low volumes of inpatient admissions. This bill would improve the existing low-volume add-on payment for hospitals so that more rural facilities with low volumes would receive the assistance they desperately need.

Over the years, many have commented that it is simply unfair for many rural hospitals to receive only a limited amount of Medicare Disproportionate Share Hospital, or DSH, payments while many urban hospitals are not subject to such a cap. This bill would eliminate the cap for DSH payments for those rural hospitals for a 2-year period.

There are also other provisions that would continue to help rural hospitals. The rural flexibility program would be extended for an additional year. Certain rural hospitals that are paid on a cost basis for the outpatient laboratory services they provide would continue to do so on a permanent basis. And Critical Access Hospitals that provide outpatient laboratory services would be paid 101 percent of their costs regardless of whether the specimen was collected from a patient of the CAH or whether the specimen was collected in a skilled nursing facility or clinic associated with the CAH.

This legislation also seeks to improve incentives for physicians located in rural areas and increase beneficiaries' access to rural health care providers. It includes provisions designed to reduce inequitable disparities in physician payment resulting from the Geographic Practice Cost Indices, or adjusters, known as GPCIs. Medicare payment for physician services varies from one area to another based on the geographic adjustments for a particular area. Geographic adjustments are intended to reflect cost differences in a given area compared to a national average of 1.0 so that an area with costs above the national average would have an index greater than 1.0, and an area below the national average would have an index less than 1.0. There are currently three geographic adjustments: for physician work, practice expense, and malpractice expense.

Unfortunately, the existing geographic adjusters result in significant disparities in physician reimbursement which penalize, rather than equalize, physician payment in Iowa and other rural states. These geographic disparities in payment lead to rural states experiencing significant difficulties in recruiting and retaining physicians and other health care professionals due to their significantly lower reimbursement rates.

These disparities have perverse effects when it comes to realigning Medicare payment to reward quality of care. Let me put that into context. Iowa is widely recognized as providing some of the highest quality health care in the country yet Iowa physicians receive some of the lowest Medicare reimbursement due to these inequitable geographic adjustments. Medicare reimbursement for some procedures is at least 30 percent lower in Iowa than payment for those very procedures in other parts of the country. That is a significant disincentive for Iowa physicians who are providing some of the best quality care in the country, and it is fundamentally unfair. Congress needs to reduce these disparities in payment and focus on rewarding physicians who provide high quality care.

The inequitable geographic payment formulas have also exacerbated the problems that rural areas face in terms of access to health care. Rural America today has far fewer physicians per capita than urban areas. The GPCI formulas are a dismal failure in promoting an adequate supply of physicians in States such as Iowa, and more severe physician shortages in rural areas are predicted in the future.

The legislation I am introducing today makes changes in the GPCI formulas for work and practice expense to reverse this trend. It establishes a 1.0 floor for the physician work and practice expense adjustments. It also revises the calculation of the work and practice expense formulas to reduce payment differences and more accurately compensate physicians in rural areas for their true practice costs. We must act now to help rural States recruit and retain more physicians so that beneficiaries will continue to have access to needed health care.

Congress has previously enacted a number of other provisions to improve Medicare payment for health care professionals and providers in rural areas that will expire soon. This bill extends the five percent incentive payments for primary care and specialty physicians in scarcity areas through December 2009. It also extends the existing payment arrangements which allow independent laboratories to bill Medicare directly for certain physician pathology services.

The bill includes several new provisions to improve beneficiary access to health care services. It increases rural ambulance payments by 5 percent for the next 18 months. It permanently increases the payment limits for rural health clinics. It allows hospital-based renal dialysis centers and skilled nursing facilities to provide telehealth services. It also allows physician assistants to order post-hospital extended care services and to serve hospice patients.

Finally, the bill would protect rural areas from being adversely affected by the new Medicare competitive bidding program for durable medical equipment. It would ensure that home medical equipment suppliers who provide equipment and services in rural areas and small metropolitan statistical areas, MSAs, with a population of 600,000 or less can continue to serve the Medicare program by exempting these areas from competitive bidding. We must ensure that rural areas continue to have medical equipment suppliers available to serve beneficiaries in these areas.

Mr. President, as you can see, we still have much to do when it comes to ensuring access to health care in rural America. I look forward to working with my colleagues on this important matter.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the bill.

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

MEDICARE RURAL HEALTH ACCESS IMPROVEMENT ACT OF 2008

TITLE I—PROVISIONS RELATING TO MEDICARE PART A

Section 101. Extension of Medicare Rural Hospital Flexibility Grant Program.

Current Law

Presently, the Medicare Rural Hospital Flexibility Grant Program is authorized for $35 million from FY2005 through FY2008.

Explanation of Provision

The provision would extend this grant program through FY2009.

Section 102. Improvements to the Medicare Dependent Hospital (MDH) Program.

Current Law

MDHs are small rural hospitals with a high proportion of patients who are Medicare beneficiaries (have at least 60% of acute inpatient days or discharges attributable to Medicare in FY1987 or in two of the three most recently audited cost reporting periods). An MDH cannot be a Sole Community Hospital (SCH) and must have 100 or fewer beds. Until October 1, 2006, MDHs were paid at the wage-adjusted national standardized amount or, if higher, 50% of their adjusted FY1982 or FY1987 hospital specific costs. Starting for discharges on October 1, 2006, an MDH would be able to elect payments based on its FY2002 hospital specific costs if that would result in higher Medicare payments. Also, starting for discharges on October 1, 2006, an MDH that elected to be paid using its hospital-specific costs would have its payments based on 75% of those costs.

Explanation of Provision

Starting for discharges on October 1, 2008 until October 1, 2011, an MDH that elects to be paid using the national standardized amount would not have that per discharge payment amount adjusted by an area wage adjustment unless such adjustment will result in improved payments to the MDH. Starting for discharges on October 1, 2008 until October 1, 2011, those MDHs would have their payments based on 85% of their hospital specific costs.

Section 103. Rebasing for Sole Community Hospitals (SCHs).

Current Law

Medicare payments to SCHs for inpatient hospital services are made on the basis of the federal per discharge payment amount or on the basis of its updated hospital-specific per discharge amount from FY1982, FY1987, or FY1996, whichever would result in the largest payment.

Explanation of Provision

Starting for discharges on October 1, 2008, SCHs would be able to elect payment based on their FY2002 hospital-specific payment amount per discharge. This amount would be increased by the annual update starting in FY2008.

Section 104. Temporary Improvements to the Medicare Inpatient Hospital Payment Adjustment for Low-volume Hospitals.

Current Law

Under Medicare's Inpatient Prospective Payment System (IPPS), certain low-volume hospitals receive a payment adjustment to account for their higher costs per discharge. A low volume hospital is defined as an acute care hospital that is located more than 25 road miles from another comparable hospital and that has less than 800 total discharges during the fiscal year. Under current law, the Secretary is required to determine an appropriate percentage increase for these low-volume hospitals based on the empirical relationship between the standardized cost-per-case for such hospitals and their total discharges to account for the additional incremental costs (if any) that are associated with such number of discharges. The low-volume adjustment is limited to no more than 25 percent. Accordingly, under regulations, qualifying hospitals (those located more than 25 road miles from another comparable hospital) with less than 200 total discharges receive a 25% payment increase for every Medicare discharge.

Explanation of Provision

This provision would make a temporary adjustment that would provide payments in FY2009 and FY2010 to more low-volume hospitals. A low-volume hospital could be located more than 15 road miles from another comparable hospital and have 2,000 discharges of individuals entitled to or enrolled for Medicare Part A benefits. The Secretary would determine the applicable percentage increase using a linear sliding scale ranging from 25% for low-volume hospitals below a certain threshold to no adjustment for hospitals with greater than 2,000 discharges of individuals with Medicare Part A benefits.

Section 105. Temporarily Lifting the Disproportionate Share Hospital (DSH) Adjustment Cap.

Current Law

Medicare will increase its payments to hospitals that qualify for a DSH adjustment. In many instances, the size of a hospital's DSH adjustment will depend upon the number of patient days provided to poor Medicare patients or Medicaid patients (DSH patient share). However, small urban hospitals and many rural hospitals have their DSH adjustment capped at 12%.

Explanation of Provision

The provision would eliminate the DSH adjustment cap for these hospitals for discharges occurring in FY2009 and FY2010. For discharges on or after October 1, 20010, the DSH adjustment cap would revert to 12%.

TITLE II—PROVISIONS RELATING TO MEDICARE PART B

Section 201. Extension and Expansion of the Medicare Hospital Outpatient Department Hold Harmless Provision for Small Rural Hospitals.

Current Law

Small rural hospitals (with no more than 100 beds) that are not Sole Community Hospitals (SCHs) can receive additional Medicare payments if their outpatient payments under the prospective payment system are less than under the prior reimbursement system. For CY2006, these hospitals will receive 95% of the difference between payments under the prospective payment system and those that would have been made under the prior reimbursement system. The hospitals will receive 90% of the difference in CY2007 and 85% of the difference in CY2008.

Explanation of Provision

The provision would establish that in CY 2009 and CY 2010, small rural hospitals, including Medicare Dependent Hospitals and SCHs, would receive 100% of the difference between payments made under the Medicare Hospital Outpatient Prospective Payment System and those made under the prior reimbursement system.

Section 202. Expansion of the Medicare Hospital Outpatient Department Add-on Payment for Rural Sole Community Hospitals (SCHs).

Current Law

Under Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), the Secretary was required to study to determine whether the costs incurred by rural hospitals were greater than urban hospitals and whether the prospective payment system (PPS) for hospital outpatient departments (HOPD) accounted for those cost differences. The Secretary was authorized to provide a payment adjustment for rural hospitals by January 1, 2006 if such an adjustment was warranted. Starting in CY2006, rural SCHs have had their Medicare payments for outpatient services increased by 7.1%.

Explanation of Provision

This provision would establish that the Secretary's authority to provide a payment adjustment would apply to services furnished in 2006, 2007 and 2008. The Medicare statute would be amended so that SCHs and Medicare Dependent Hospitals (MDHs) in rural areas would receive a 7.1% increase in payments for covered HOPD services for services starting January 1, 2009. The increase would be applied before calculating outliers and coinsurance. The Secretary would be able to revise this percentage starting for services furnished after January 1, 2010 through promulgation of a regulation. The increase would not apply to pass-through drugs and biologicals. The increased payments as they relate to SCHs and MDHs would not be implemented in a budget-neutral manner.

Section 203. Permanent Treatment of Medicare Reasonable Costs Payments for Certain Clinical Diagnostic Laboratory Tests Furnished to Hospital Patients in Certain Rural Areas.

Current Law

Generally, hospitals that provide clinical diagnostic laboratory services under Part B are reimbursed using a fee schedule. Hospitals with under 50 beds in qualified rural areas (certain rural areas with low population densities) receive 100% of reasonable cost reimbursement for the clinical diagnostic laboratories covered under Part B that are provided as outpatient hospital services. Reasonable cost reimbursement for laboratory services provided by these hospitals will expire on July 1, 2008.

Explanation of Provision

This provision would add Section 1833(v) to the Social Security Act which would make reasonable cost reimbursement for laboratory services provided by qualified rural hospitals permanent starting July 1, 2008. The Secretary would be required to apply the current rules that are used to determine whether clinical diagnostic laboratory services are furnished as an outpatient Critical Access Hospital service (without regard to amendments enacted in this legislation.)

Section 204. Clarification of Payment for Clinical Laboratory Tests Furnished by Critical Access Hospitals (CAHs).

Current Law

Medicare outpatient covered clinical laboratory services are generally paid based on a fee schedule. Clinical diagnostic laboratory services provided to patients who receive services directly from CAHs on an outpatient basis are paid 101% of reasonable costs. Clinical laboratory services provided by CAHs to those who are not patients are paid on the basis of the Medicare fee schedule. In no instance are Medicare beneficiaries liable for any coinsurance or deductible amounts.

Explanation of Provision

Under this provision, clinical diagnostic laboratory services furnished by a CAH starting in January 1, 2009 would be reimbursed at 101% of costs as outpatient hospital services without regard to whether the specimen was collected from a patient of the CAH or whether the specimen was collected in a skilled nursing facility or clinic that is owned by or co-located with the CAH.

Section 205. Extension of Medicare Incentive Payment Program for Physician Scarcity Areas.

Current Law

MMA provided for an additional 5% in payments for certain physicians in scarcity areas for the period January 1, 2005 through December 31, 2007. The Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) extended these payments through June 30, 2008. The Secretary was required to calculate, separately for practicing primary care physicians and specialists, the ratios of such physicians to Medicare beneficiaries in the county, rank each county (or equivalent area) according to its ratio for primary care and specialists separately, and then identify those scarcity areas with the lowest ratios which collectively represented 20% of the total Medicare beneficiary population in those areas. The list of counties was to be revised no less often than once every three years unless there were no new data. There would be no administrative or judicial review of the designation of the county or area as a scarcity area, the designation of an individual physician's specialty, or the assignment of a postal zip code to the county or other area. The listing of counties appeared in Appendix I and Appendix J of the 2005 physician fee schedule update.

Explanation of Provision

The provision would extend the add-on payments through December 31, 2009.

Section 206. Revisions to the Work Geographic Adjustment Under the Medicare Physician Fee Schedule.

Current Law

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

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

MMA required the Secretary to increase the value of any work geographic index that was below 1.00 to 1.00 for services furnished on or after January 1, 2004 and before January 1, 2007. TRHCA extended the provision for an additional year, through December 31, 2008, and MMSEA extended the provision for an additional six months, for services provided before July 1, 2008.

Explanation of Provision

Subsection (a) would extend the 1.0 work floor through December 31,2009. Subsection (b) would recognize the equality of physician work in all geographic areas and eliminate differing work index values by establishing a national value of 1.0, effective 2010.

Section 207. Revisions to the Practice Expense Geographic Adjustment Under the Medicare Physician Fee Schedule.

Current Law

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

The geographic adjustment factors are indices that reflect the relative cost difference in a given area in comparison to a national average. An area with costs above the national average would have an index greater than 1.00 while an area with costs below the average would have an index below 1.00. The practice expense geographic adjustment is calculated by measuring variations in employee wages, office rents, and miscellaneous. The Secretary is required to periodically review and adjust the geographic indices.

Explanation of Provision

Subsection (a) would establish a practice expense floor of 1.0 for 2009 by requiring the Secretary to increase the value of any practice expense geographic index that was below 1.0 to 1.0 for services furnished on or after January 1, 2009 and before January 1, 2010. Subsection (b) would reduce the geographic adjustment for practice expense to 50 percent of the current adjustment for employee wages and rent, effective 2010.

Section 208. Extension of Treatment of Certain Physician Pathology Services Under Medicare.

Current Law

BBA 97 specified that independent labs that had agreements with hospitals on July 22, 1999, to bill directly for the technical component of pathology services could continue to do so in 2001 and 2002. The provision has been periodically extended. TRHCA extended the provision through 2007, and MMSEA further extended it through June 30, 2008.

Explanation of Provision

The provision would be extended through December 31, 2009.

Section 209. Extension of Increased Medicare Payments for Rural Ground Ambulance Services.

Current Law

Ambulance services are paid on the basis of a national fee schedule, which is being phased in. The fee schedule establishes seven categories of ground ambulance services and two categories of air ambulance services. The payment for a service equals a base rate for the level of service plus payment for mileage. Geographic adjustments are made to a portion of the base rate.

Explanation of Provision

The provision would provide for an increase in the rates otherwise established for ground ambulance services of 5% in rural areas for the period July 1, 2008–December 31, 2009.

Sec. 210. Adding Hospital-Based Renal Dialysis Centers (Including Satellites) As Originating Sites for Payment of Telehealth Services.

Current Law

Medicare may cover a telehealth service for beneficiaries who are located (i) in an area designated as a rural health professional shortage area; (ii) in a county that is not included in a Metropolitan Statistical Area; or (iii) at an entity that participates in a federal telemedicine demonstration project that has been approved by (or receives funding from) the Secretary of Health and Human Services as of December 31, 2000. If a beneficiary is located in those areas, counties, or entities, then the beneficiary is permitted to receive telemedicine at one of the following sites: (1) a physician or practitioner's office; (ii) a critical access hospital; (iii) a rural health clinic; (iv) a federally qualified health center; or (v) a hospital.

Explanation of Provision

This provision would permit a hospital-based or critical access hospital-based renal dialysis center (including satellites) to serve as a telemedicine site. The provision would be effective for services furnished on or after January 1, 2009.

Section 211. Expansion of Telehealth Services to Skilled Nursing Facilities.

Current Law

Medicare covers certain services including professional consultations, office and other outpatient visits, individual psychotherapy, pharmacological management, psychiatric diagnostic interview examinations and end stage renal disease related services delivered via an eligible telecommunications system. The originating site (the location of the beneficiary receiving the telehealth service) can be a physician or practitioner's office, a critical access hospital, a rural health clinic, a federally qualified health center, or a hospital. The originating site must be in a rural health professional shortage area or in a county that is not in a metropolitan statistical area or at an entity that participates in a specified federal telemedicine demonstration project.

Explanation of Provision

The provision would permit otherwise qualifying skilled nursing facilities to be the originating site for the provision of covered telehealth services furnished on or after January 1, 2009.

Section 212. Rural Health Clinic Improvements.

Current Law

Most rural health clinics (RHCs) receive cost-based reimbursement from Medicare, subject to per-visit payment limits and certain productivity standards. Each year the limit is increased by the percentage increase in the Medicare Economic Index (MEI). For CY2007, the RHC upper payment limit is $74.29 per visit.

Explanation of Provision

The provision would establish the RHC upper payment limit at $92 per visit in 2009. The limit would be increased in subsequent years by the limit established for the previous year increased by the percentage increase in the MEI applicable to primary care services.

Section 213. Exemption for suppliers in small MSAs and rural areas.

Current Law

The MMA established Medicare competitive bidding for durable medical equipment, supplies, and other items. The Secretary is required to establish competitive acquisition areas, but has discretion to exempt rural areas and areas with low population density within urban areas that are not competitive, unless a significant national market exists through mail order for a particular item or service. The programs are required to be phased-in so that competition under the programs occurs in 10 of the largest metropolitan statistical areas (MSAs) beginning in 2007, 80 of the largest MSAs in 2009, and remaining areas after 2009.

Explanation of Provision

The provision would require the Secretary to exempt rural areas and small MSAs with a population of 600,000 or less. Competitively bid prices would not apply to rural and small MSAs exempted under this section. The provision would be effective as if included in the MMA, other than for contracts entered into pursuant to implementation of competitive bidding prior to September 1, 2008.

Section 214. Permitting Physician Assistants to Order Post-Hospital Extended Care Services and to Provide for Recognition of Attending Physician Assistants as Attending Physicians to Serve Hospice Patients.

(a) Ordering Post-Hospital Extended Care Services.

Current Law

In a skilled nursing facility (SNF), Medicare law allows physicians, as well as nurse practitioners and clinical nurse specialists who do not have a direct or indirect employment relationship with a SNF, but who are working in collaboration with a physician, to certify the need for post-hospital extended care services for purposes of Medicare payment. Section 20.2.1 of Chapter 8 of the Medicare Benefit Policy Manual defines post-hospital extended care services as services provided as an extension of care for a condition for which the individual received inpatient hospital services. Extended care services are considered ''post-hospital'' if they are initiated within 30 days after discharge from a hospital stay that included at least three consecutive days of medically necessary inpatient hospital care.

Explanation of Provision

The provision would allow a physician assistant who does not have a direct or indirect employment relationship with a SNF, but who is working in collaboration with a physician, to certify the need for post-hospital extended care services for Medicare payment purposes.

(b) Recognition of Attending Physician Assistants as Attending Physicians to Serve Hospice Patients.

Current Law

Under the Medicare program, hospice services may only be provided to terminally ill individuals under a written plan of care established and periodically reviewed by the individual's attending physician and the medical director (and by the interdisciplinary group of the hospice program). For purposes of a hospice written plan of care, Medicare defines an attending physician as a physician or nurse practitioner who may be employed by a hospice program and who the individual identifies as having the most significant role in the determination and delivery of medical care to the individual at the time the individual makes an election to receive hospice care.

For an individual to be eligible for Medicare-covered hospice services, the individual's attending physician (not including a nurse practitioner) and the medical director (or physician member of the interdisciplinary group of the hospice program) must each certify in writing that the individual is terminally ill at the beginning of the first 90-day period of hospice.

Explanation of Provision

For purposes of a hospice written plan of care, the provision would include a physician assistant in the definition of an attending physician. The provision would continue to exclude physician assistants from the authority to certify an individual as terminally ill.

Both provisions would apply to items and services furnished on or after January 1, 2009.

By Ms. MIKULSKI (for herself, Ms. KLOBUCHAR, Ms. STABENOW, Mr. COLEMAN, Mr. HARKIN, Mr. CASEY, Mr. SANDERS, Mr. SCHUMER, Mr. CARDIN, Mr. BROWN, Ms. COLLINS, Mr. LEAHY, Mrs. CLINTON, Mr. LEVIN, Mr. KENNEDY, Mr. KERRY, Mrs. BOXER, Mr. REID, and Mr. BINGAMAN):

S.J. Res. 30. A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Centers for Medicare & Medicaid Services within the Department of Health and Human Services relating to optional State plan case management services under the Medicaid program; to the Committee on Finance.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the text of the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 30

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Centers for Medicare & Medicaid Services within the Department of Health and Human Services relating to optional State plan case management services under the Medicaid program (published at 72 Fed. Reg. 68077 (December 4, 2007)), and such rule shall have no force or effect.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 481—DESIGNATING APRIL 2008 AS ''NATIONAL AUTISM AWARENESS MONTH'' AND SUPPORTING EFFORTS TO INCREASE FUNDING FOR RESEARCH INTO THE CAUSES AND TREATMENT OF AUTISM AND TO IMPROVE TRAINING AND SUPPORT FOR INDIVIDUALS WITH AUTISM AND THOSE WHO CARE FOR INDIVIDUALS WITH AUTISM

Mr. HAGEL (for himself, Mr. SCHUMER, Mr. LAUTENBERG, Mr. FEINGOLD, and Ms. STABENOW) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 481

Whereas autism is a developmental disorder that is typically diagnosed during the first 3 years of life, robbing individuals of their ability to communicate and interact with others;

Whereas autism affects an estimated 1 in every 150 children in the United States;

Whereas autism is 4 times more likely to occur in boys than in girls;

Whereas autism can affect anyone, regardless of race, ethnicity, or other factors;

Whereas it costs approximately $80,000 per year to treat an individual with autism in a medical center specializing in developmental disabilities;

Whereas the cost of special education programs for school-aged children with autism is often more than $30,000 per individual per year;

Whereas the cost nationally of caring for persons affected by autism is estimated at upwards of $90,000,000,000 per year;

Whereas despite the fact that autism is one of the most common developmental disorders, many professionals in the medical and educational fields are still unaware of the best methods to diagnose and treat the disorder; and

Whereas designating April 2008 as ''National Autism Awareness Month'' will increase public awareness of the need to support individuals with autism and the family members and medical professionals who care for individuals with autism: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 2008 as ''National Autism Awareness Month'';

(2) recognizes and commends the parents and relatives of children with autism for their sacrifice and dedication in providing for the special needs of children with autism and for absorbing significant financial costs for specialized education and support services;

(3) supports the goal of increasing Federal funding for aggressive research to learn the root causes of autism, identify the best methods of early intervention and treatment, expand programs for individuals with autism across their life spans, and promote understanding of the special needs of people with autism;

(4) stresses the need to begin early intervention services soon after a child has been diagnosed with autism, noting that early intervention strategies are the primary therapeutic options for young people with autism, and that early intervention significantly improves the outcome for people with autism and can reduce the level of funding and services needed to treat people with autism later in life;

(5) supports the Federal Government's more than 30-year-old commitment to provide States with 40 percent of the costs needed to educate children with disabilities under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.);

(6) recognizes the shortage of appropriately trained teachers who have the skills and support necessary to teach, assist, and respond to special needs students, including those with autism, in our school systems; and

(7) recognizes the importance of worker training programs that are tailored to the needs of developmentally disabled persons, including those with autism, and notes that people with autism can be, and are, productive members of the workforce if they are given appropriate support, training, and early intervention services.

SENATE RESOLUTION 482—DESIGNATING JULY 26, 2008, AS ''NATIONAL DAY OF THE AMERICAN COWBOY''

Mr. ENZI (for himself, Mr. BARRASSO, Mr. ALLARD, Mr. CRAIG, Mr. CRAPO, Mr. DOMENICI, Mr. DORGAN, Mr. ENSIGN, Mr. BINGAMAN, Mr. INHOFE, Mrs. MURRAY, Mr. REID, Mr. SALAZAR, Mr. STEVENS, Mr. MARTINEZ, and Mr. JOHNSON) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 482

Whereas pioneering men and women, recognized as ''cowboys'', helped establish the American West;

Whereas the cowboy embodies honesty, integrity, courage, compassion, respect, a strong work ethic, and patriotism;

Whereas the cowboy spirit exemplifies strength of character, sound family values, and good common sense;

Whereas the cowboy archetype transcends ethnicity, gender, geographic boundaries, and political affiliations;

Whereas the cowboy is an excellent steward of the land and its creatures, who lives off of the land and works to protect and enhance the environment;

Whereas cowboy traditions have been a part of American culture for generations;