

2 | FRIDAY, OCTOBER 16, 1987

3 U.S. Senate

4 | Committee on Finance

Washington, D.C.

The meeting was convened, pursuant to notice, at 10:08 a.m. in Room SD-215, Dirksen Senate Office Building, the Honorable Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Matsunaga, Moynihan, Baucus, Boren, Bradley, Mitchell, Pryor, Riegle, Rockefeller, Daschle, Packwood, Danforth, Chafee, Heinz, Wallop, and Durenberger.

Also present: Mr. Bill Wilkins, Staff Director and Chief Counsel; Ms. Mary McAuliffe, Chief of Staff, Minority; Mr. Jim Gould, Chief Tax Counsel, Majority; Mr. Randy Hardock, Tax Counsel, Majority; Ms. Anne Weiss, Professional Staff/Health; Mr. Randy Weiss, Joint Committee on Taxation; Dr. Marine Weiss, Chief Analyst for Health and Human Services; Messrs. Ed Mihalski, Deputy Chief of Staff, Minority/Chief Health Analyst; Joe Humphreys, Social Welfare Professional Staff; John Colvin, Chief Tax Counsel, Minority; and Frank Cantrel, Tax Counsel, Minority.

Also present: Messrs. Don Chapoton, Deputy Assistant Secretary for Taxation, Department of the Treasury; Dennis Ross, Tax Legislative, Counsel, Department of the Treasury.



Also present: Dr. Don Muse, Congressional Budget
Office; and Ms. Patricia Knight, Deputy Assistant Secretary
for Legislation (Health), Department of Health and Human
Services.

(The press release announcing the meeting follows:)

The Chairman. This hearing will come to order. Please cease conversation, and please take your seats.

We are presenting to the committee this morning a package of appropriation cuts, spending cuts, revenue raisers that will meet the charge to this committee of meeting some \$11 billion \$600 million in the way of reduction of the deficit and the budget and trying to meet the reconciliation deadline that is on the 19th.

In turn, if it is passed successfully out of this committee, it will be given to the Budget Committee; and we will have complied with our part of it.

It has obviously not been an easy process. It has taken a substantial amount of time.

I would like to have us start through the revenue raisers and hit the high points of those. Obviously, if any member has any question concerning them, of course, do so.

Senator Packwood. Mr. Chairman, I have a series of questions I would like to ask the staff, but I would be happy to defer them until they go through the explanation of the package; but I will need maybe 10 to 12 minutes to ask them a series of questions.

The Chairman. That will be fine, and I am sure there will be many questions that will be asked of the staff concerning the revenue raisers and the cuts that have been taken. Perhaps, considering what you have said, Senator,

maybe it is better that we go all the way through these and then we begin to ask some questions.

Senator Packwood. All right.

The Chairman. So, let's start with the revenue raisers, Randy.

Mr. Weiss. Mr. Chairman, the revenue raisers begin on page 1 of the document. The first one is to repeal the completed contract method. In last year's bill, you repealed it to the extent of 40 percent; this would go to 100 percent and require that all long-term contracts be treated under the percentage of completion method, rather than the completed contract method.

On page 2 is an item to repeal the vacation pay reserve, which would require that employers deduct amounts of vacation pay only when they pay it or if they pay it in the first two and half months of the following year.

The third item deals with installment sales on page 3, and under this proposal, there are several components. For dealers, the installment method would be repealed. For nondealers—so-called casual sales—the proportionate disallowance method that you adopted last year would be repealed, with several restrictions, first of all that a transaction where there was a pledge or a wraparound, it would still be subject to disallowance of the installment method, and also to the extent that there are more than

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\$5 million of sales in a year, there would be an interest charge on the deferred tax.

The next item on page 5 deals with the treatment of customer base intangibles when a company is purchased and essentially says that amortization deductions are not allowed for intangibles that are related to a customer base.

The next item on pages 6 and 7 are two components of the package dealing with estimated taxes.

The first one gives relief for individuals for one year from the requirement that they pay 90 percent of tax liability in the form of estimated taxes and basically delays that until 1988. And there is also a provision which allows a safe harbor for corporations for the first part of this year.

On page 7 is a permanent provision which has the net effect of tightening up on the estimated tax rules for corporations to require that more of the tax be paid in the form of estimated payments, rather than when the return is filed.

On page 9 is the first of a series of corporate provisions. The first one deals with sales of subsidiaries and provides that the basis of the stock of the subsidiary for the purpose of calculating gain on the transaction takes account of the regular income tax treatment of deferral items, rather than the earnings and profits treatment.

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On page 10, there is a provision that deals with cases where, if a group owns less than 100 percent of the stock of a subsidiary, there is not--under this proposal--allowed a full pass-through of losses. So, the losses are allowed only with respect to the percentage of the subsidiary's income or loss attributable to stock owned by corporations outside the group.

On page 11 is a provision that denies the benefits of graduated corporate rates to personal service corporations.

On page 12 is a provision that deals with liquidations of corporate subsidiaries and essentially tightens up the rules which allow corporations to be split up into separate subsidiaries without the current recognition of income.

On page 13 is a provision which tightens up on the distribution requirements for mutual funds so that more of the income that the fund receives has to be paid to the shareholders currently than is required under present law.

On page 14 is a provision that essentially requires that losses and deductions and income of publicly traded limited partnerships are treated as portfolio income for purposes of the passive loss rules that were enacted in last year's bill.

On page 15 is a Treasury Department proposal that would exempt from the withholding tax interest on certain outstanding Eurobonds.

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Item 16 is a proposal to tighten the allowable deductions for pension plans which are overfunded so that, if they have substantially more than their termination liability, further contributions would not be deductible.

On page 17, this refers to a package of proposals dealing with PBGC and underfunding of pension plans. The package increases the premiums, introduces a risk-related component, and also tightens up the rules requiring accelerated contributions by underfunded plans.

On page 18, the proposal freezes the top estate and gift tax rate at 55 percent, rather than allowing it to decline to 50 percent. This affects estates of over \$2.5 million.

On page 19 is a proposal that the chairman introduced earlier this year to modify the deduction in the estate tax for sales of stock to an ESOP and tighten it up to correspond more closely to the total revenue effect that was intended in last year's Act.

On page 20, the telephone tax is extended at its present rate for three years.

On page 21, the provision would require wholesalers to pay the diesel fuel tax, rather than retailers, and there are revenues there from improved compliance as well as speeding up collections.

Page 22 would provide that, for the purpose of the

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Medicare component of Social Security taxes, there would be no limitation on the amount of wages subject to the tax.

One page 23 is a proposal to have additional funding for the Railroad Retirement System by essentially increasing the Tier II taxes.

On page 25 is a proposal to extend through 1990 the temporary .2 percent extra FUTA tax that has been in effect to build up a reserve for the Federal Unemployment Trust Fund.

On page 26 is an Administration proposal to provide that the IRS would charge user fees for letter rulings and similar determinations.

On page 27, there is a proposal to increase the so-called occupational taxes that are presently required by dealers that sell alcohol, tobacco, and firearms.

On page 28 is a proposal that was suggested by the Administration to repeal the so-called Schedule 8 exemption and to extend the Customs user fee for one additional year.

On page 29 is a proposal to extend and expand the Federal debt collection program which allows the IRS to withhold tax refunds from taxpayers who owe debts to Federal agencies.

And then, the last few pages from page 30 to the end of the document are various, miscellaneous amendments that have been suggested with relatively small revenue losses.

The Chairman. All right. That takes us through all the

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revenue raisers. Is that correct?

Mr. Gould. That is right.

The Chairman. I think we will proceed at that point and open it up to any questions concerning any of them. I understand the ranking member has questions he would like to ask.

Senator Packwood. Mr. Chairman, let me address this.

Bill, it may be you, but I am not sure who is the best expert

on budget reconciliation; but if not, maybe you can ask Mr.

Humphreys.

Mr. Wilkins. I am going to ask Joe to sit next to me, if he will.

Senator Packwood. All right. Is this being reported as if it is the reconcilation bill?

Mr. Humphreys. Yes.

Mr. Wilkins. The intention is to send our recommendations to the Budget Committee for their inclusion in a reconciliation measure.

Senator Packwood. And under the reconciliation order, how much are we ordered to produce in revenues?

Mr. Wilkins. The reconciliation instruction under H. Con. Res. 93 provides revenues reconciled to the Finance Committee of \$19.3 billion for fiscal year 1988.

Senator Packwood. And we are going to miss that target substantially?

Mr. Wilkins. This package would miss that target for fiscal year 1988. The 1989 and 1990 numbers are \$22 and \$23 billion with the full fiscal year effect in those out years. Of course, we are already in the 1988 fiscal year.

Senator Packwood. It looks to me like we missed it by about \$7 or \$8 billion this year and \$21 or \$24 billion over the three years; I may be off a couple billion, but roughly.

Mr. Wilkins. That is approximately right.

Senator Packwood. Now, under what authority have we decided that we no longer need to meet the targets that we were reconciled to meet and which haven't been changed?

The Chairman. I will be answering some of those questions, Bill.

(Laughter)

Senator Packwood. That would be fine if the chairman would answer. I am curious as to how arrangements get made to change the law as to the targets we are going to meet.

The Chairman. I will be very happy to comment on that.

What we are facing is a sequester, and every story we hear from downtown is that that is what the President is going to do. And what we are trying to do is offer a responsible alternative to sequester, and we have chosen as a target—the House is doing \$12 billion, and we are talking about \$11.5 billion—that is half of the \$23 billion, with the anticipation of the other half being made up either by

cuts in appropriations or by a lessened sequester.

I happen to believe that a sequester is something that we should strenuously try to avoid. I think that it is going to be extremely punitive on some programs that are very important to the American people, and I feel this is a responsible exercise to try to avoid that.

Senator Packwood. Mr. Chairman, without quarreling as to the merits of what is in the tax package, I am curious how this committee came to a figure of \$11.5 billion because I am now going to go on, in a minute, and ask about some of the other committees and what targets they were reconciled to meet and whether or not those targets have been changed or whether we know what they are going to report or if they have reported.

How did we get to the figure of \$11.5 billion? Just say half of \$23 billion?

The Chairman. That is correct.

Senator Packwood. But the law still says \$19 billion.

Mr. Wilkins. That is the instruction in the concurrent budget resolution.

Senator Packwood. And here is what I am curious about because budget reconciliation is a very significant process, and it severely limits the powers and rights of members on the floor: 20 hours of debate, no extraneous material.

Are we at liberty to report anything we want in a return

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to the Budget Committee and have it put in a reconciliation package, whether it meets the targets or not--over them or under them--and have it go to the floor under the reconciliation procedures?

Mr. Wilkins. Senator Packwood, that is a decision for the parliamentarian to make based on the actions of the committees and his view as to whether, on balance, the package ought to be treated as a reconciliation bill, weighing the concurrent budget resolution against the contents of the reconciliation package.

Senator Packwood. And basically, however, whatever his ruling, he can be overruled by 60 members on a point of order.

Mr. Wilkins. I don't think that is a waivable point of order, but the ruling of the chair could be overturned. I don't believe that is a 60 vote.

Senator Packwood. Here is the first thing I am worried about. I indicated earlier I did not think this is timely, and I see that Speaker Wright has now put off any action on reconciliation in the House until October 27. And of course, there is no time limit at all when the Budget Committee has to report.

We report to the Budget Committee. We vote for or against taxes. We don't know what the rest of the spending parts of the package are going to be or the cuts, and the Budget Committee may or may not report it out. They don't

have to, as I understand it.

They are not constrained by a time limit, are they?

Mr. Humphreys. That is right.

Senator Packwood. I know I speak at least from the Commerce Committee, because the chairman and I are on the Commerce Committee; and I know the Commerce Committee hasn't even met to consider its reconciliation targets, nor does it intend to, nor does—based upon what Chairman Hollings said on the floor yesterday—the Commerce Committee intend to meet its targets.

Has the Banking Committee met its targets?

Mr. Wilkins. We have not been monitoring the other committees from our staff, Senator.

Senator Packwood. I have monitored all of them. Most of them have not even attempted to hit their targets, don't plan to hit their targets, don't plan to submit to the Budget Committee where they suggest cuts should come, period.

Some have; most have not. So, we are now being asked to vote for a tax increase; and again, I am not commenting on the merits of the tax increase. We are being asked to vote for a tax increase which, if it would become law--and it isn't going to become law because the President is going to veto it, and the veto will be sustained--but if it were to become law, and nothing else happened, I suppose what we would succeed in doing is cutting the sequester in half so that

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instead of programs being sequestered eight percent, they would be sequestered four percent across the board; and we still wouldn't make any rational budget decisions as to whether or not the Appalachia Regional Commission is more important than Title I and education. We would cut them all equally.

But we are being asked to vote for a tax package, send it to the Budget Committee, which may or may not ever report. We are being asked to do it, even though we don't know if the reconciliation targets in the other committees have been changed. They have been changed here by informal agreement, not by law.

We don't know if the other committees are still operating under their old reconciliation orders or informally agreed to new ones to meet a \$23 billion total rather than the old reconciliation totals.

We don't know if the money is going to be used if we send it out to cut the sequester in half or whether it is going to be used to make rational budget decisions.

We don't know if half of this might go for increase in defense spending. It might or it might not.

And the reason I think it is not timely is because we don't know the package; and one of two things is going to happen. Either there is going to be a package, or there isn't going to be a package; and if there is no package, there is

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going to be a sequester, and we will cut spending by \$23 billion, period--cut spending by \$23 billion.

There will only be a package if the President is a part of it because, unless I miss my guess, any package that he vetoes, the veto will be sustained.

I think we would be wiser to wait in reporting this until the President, Speaker Wright, Majority Leader Byrd, and probably the chairman of this committee and of Appropriations and a few others, and minority members get together and see if they can hammer out a package.

If they can and the President agrees, we will have a package. I don't know if that will be all legislated cuts in taxes and no sequester, whether it will be half--\$5 or \$6 billion in taxes and \$5 or \$6 billion in cuts and \$10 or \$11 billion in sequester--I don't know what the package might be that would be acceptable.

I have indicated before that I am willing to work on a package, and I can imagine packages that are more--to me at least--more acceptable than the sequester.

And I can imagine packages that, to me, would be worse than the sequester.

I would prefer to wait and see if a package can be arrived at that includes other committees that at the moment are not meeting their responsibilities nor do they intend to meet their responsibilities.

Two, I would like to see if we can involve the President, and I am willing to involve him in negotiations to see what happens. Three, if we get nothing out of the President, then I think the Congress has to make a decision.

Do we want to pass a package, knowing full well it is going to be vetoed and sustained, but we pass it because we want to make a statement that we don't agree with the sequester? Here is our idea of how the sequester ought to be eliminated or ameliorated or moderated or cut somewhat. Here is where we would make the budget decisions; and Mr. President, we send the package to you and we hope you will accept it, but if you don't and veto it, we understand the veto will be sustained.

And I am willing to make this bet. One, those negotiations will not seriously come to fruition until the day after Veterans! Day. We have to finish this by November 20; really, we have to finish it by about November 17 or 18 because, although OMB is instructed to take into account what we do during the intervening month between October 20 and November 20, and they can take into account everything up to about the 17th of November, after that it is pretty much a cut-off date.

And having been here almost 20 years, I realize that we work best against deadlines; and we will be taking off Wednesday, the 11th, which is Veterans' Day; and if we

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continue the policy of no votes on Monday, we won't be here on Monday. And my hunch is that Tuesday will not be an overwhelming day.

And we will come back here on the day after Veterans'

Day, and the negotiations will seriously start. And if they

can be concluded, they can be concluded frankly in two or

three days.

Most of the important legislation—the very important legislation—we have ever accomplished in this place is often done on relatively short notice. If negotiations cannot be completed, they won to be.

I would prefer to wait. I would prefer to see if other committees are going to do anything to meet their totals.

I would prefer to negotiate with the President, but I cannot bring myself to vote for a tax package to be used for purposes we don't know, maybe for things I would rather not have it used for, maybe for spending cuts I would rather not undertake, as opposed to spending cuts I would undertake.

In short, Mr. President--Mr. Chairman, I apologize--we are actually --

The Chairman. It had a nice ring to it.

(Laughter)

Senator Packwood. We do not know what we are getting in exchange for rour passing this tax package, and I would quote--and in this day of being very careful what you quote

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from--I will attribute this to Edna St. Vincent Millay:

It well may be that the rose for me is the rose beneath my

nose, but how can I tell until I smell the Carthaginian rose?

And with that, Mr. Chairman, I will vote no on this package. I hope to work with you. Since this package is not going to become law, I hope to work with you in that intervening month. I hope we get a package.

I don't know if we will, but I will work toward getting one and do my best to try to convince the President to accept it.

The Chairman. I am not surprised by the ranking member's position. I think we have understood that for some time now; but I do think we have a responsibility in the Congress to move.

There have been repeated attempts to try to negotiate differences with the President; he has chosen not to do that. He sent us a budget that was dead on arrival, that was defeated by both parties in both houses when it was sent to us. It was not a realistic budget, and that was generally understood.

He did have some \$6 billion of taxes in it. Now, he says he wants no taxes at all.

I think we have a responsibility to send a message, if that is what it happens to end up being, to show that we will face up to that responsibility and that we think sequester is

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a disastrous result and that we are prepared to see that half of it is paid for by revenues and the other half by cuts.

I do not dismiss the fact that the other chairmen in other committees will work to measure up to their responsibility.

I was in a meeting with the chairmen of all of the committees in which the general concensus was that they would work to try to meet their part of it. So, I think we should move ahead, and I propose that we do that.

Now, are there further questions? Yes, Senator Heinz?

Senator Heinz, Mr. Chairman, although none of us on this side of the aisle was consulted on anything having to do with this package, I think it is not on balance a bad package.

I think that your side of the aisle, Mr. Chairman, has done a credible job although I will say that I think, if Republicans—including myself—had either been included or wanted to be included, we might have done some things differently; and we might even have convinced you that there were some improvements you could have had made.

I say that not because we are smarter, but on previous occasions, when the shoe has been on the other foot, your side has made very important contributions to initiatives that we started on our side.

There are, I might as well indicate, some very good things that I would have argued for had I been in your caucus

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or meetings, and I commend you in particular on solving the phantom mutual fund income problem, the Radon medical deduction.

You have addressed the CPA's problem of the calendar year -- a number of things that I and some others on both sides of the aisle had petitioned this committee to address--and I commend you for addressing them.

I also want to indicate that I start from the presumption that it would be a very good idea to avoid a sequester, and we can avoid a sequester by enacting good legislation.

And I suspect that we cannot meet the Gramm-Rudman-Hollings targets and avoid that sequester without some revenues; and you have put into this package some revenues.

Now, I--like Bob Packwood--have one reservation about whether or not there is going to be real and substantial and balanced spending cuts from the other committees when we get to the floor; but just so there is no misunderstanding, simply because I agree with Senator Packwood on that point -- and I suspect there are some on your side of the aisle who feel the same way--I want to make it clear for the record, Mr. Chairman, that although I may withhold my support of this package until I see it all, I may very well vote for it on the floor.

And I am cognizant of what the President has said about vetoing this legislation; and if I vote for something on the

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floor, the chances that I will--if it isn't changed too much in conference--continue to support that effort, even if it is vetoed by the President.

So, I am announcing -- so there is no misunderstanding -- that substance counts with me; and I think it counts with most of our colleagues. The process and procedure count, too. haven't been, up until today, a part of the process and procedure; and so, I will not today be voting for this legislation.

But if there is an opportunity, and I suspect there will be, for us to have a bipartisan process and procedure and get substantively good legislation from this committee and from the other committees, I intend to be very much involved in that process because I think we need a solution, not bigger budget deficits.

The Chairman. Senator, I very much wanted your side of the aisle to participate in this all the way. The feeling was strongly expressed, and has been reexpressed by the ranking member, that we should wait and not start down this road.

And he spoke his position, I think, forcefully and eloquently. I happen to disagree. I did not hear that disputed on your side, and the interpretation by the chairman was that you all were choosing not to participate in the revenue raisers prior to the date of October 19; and

certainly, that was the impression of the press because that is the way I read it.

But let me say that we have done something a little extraordinary in this situation. You say you were not consulted, but we have taken a lot of your provisions and put them in here.

Senator Heinz. I just said that.

The Chairman. And we went further than that. At the end of every meeting, we sent to your staff director on your side the results of what we had done to fully apprise them, to tell the staffs, and we listened and took consultation on things that you all thought were important.

And a number of things were added, but not all of them; and that is obvious. And there are obviously things in there that many of your would prefer not to be in there; and there are some things on this side that some of them would prefer not to have in them.

But what was developed was the concensus insofar as on this side. Now, insofar as the spending side, those things have been in your hands and staff's hands on both sides for months to work on; and what you have seen there is a concensus, I think, on the spending side of those cuts that pretty well reflects a concensus of Democrats and Republicans.

Now, you didn't participate in the actual votes at the end, but we sure were taking a lot of your input. And as you

stated, we have put a lot of it in there. We did that with some of Senator Chafee's things; I know that is from Senator Heinz, and certainly from Senator Durenberger, quite a number of those things were put in there, things that each of them wanted. I think it was on the spending side; that is true. Are there further comments?

Senator Heinz, Mr. Chairman, I do want to make a statement.

Yes, all right. The Chairman.

Senator Heinz. Mr. Chairman, I am not going to contest anything, but I do want to make it clear that I commend the chair for having done that.

But I wouldn't want to leave unrebutted the presumption that, because we find out what you have done after the fact, that is the same as being in the room arguing and voting.

The Chairman. I understand that, Senator. The chairman doesn't like the position he is in.

Senator Heinz. I understand the chairman doesn't like it.

The Chairman. I am very strong for bipartisanship in this committee, but that is where we have been left; and it was handled quite differently from the way it was handled in 1982 when the majority took no consultation from the minority and did not update them as the thing progressed, but it was handled --

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Senator Heinz. Mr. Chairman, as I said, how you did as well and got as far as you did without Republican help, I will never understand.

(Laughter)

The Chairman. All right. Senator Packwood?

Senator Packwood. I kind of want to echo what Senator Bentsen is saying. Most of the Republicans--not all--but most indicated that they thought this was untimely, and they would note no on the package. We didn't mean to give the impression we were boycotting the sessions, but I very frankly think that the history of bipartisanship on this committee is such that you are not going to see what we often see in some other committees, where there is just a division.

And I think after this bill is vetoed—assuming it ever comes up on the floor to be voted on—you are going to see a genuine bipartisan effort to try to put together a package. We may fail on a bipartisan basis to put together a package that is acceptable to the Administration, but it will not be for failure to try.

Senator Danforth, Mr. Chairman?

The Chairman, Senator Danforth?

Senator Danforth. Mr. Chairman, I would like to second what Senator Packwood has just said. I think that the situation we are in with respect to reconciliation is unique,

hopefully not to be repeated.

This committee has had a very strong tradition of bipartisanship, and it still does. As I have said publicly and privately before, I have no better ally in the Senate than the chairman of this committee. We have worked together on so many things in a bipartisan spirit.

That has been the basic nature of the Finance Committee.

Some committees of the Senate are quite partisan. The Senate, as a whole, I think, has become partisan to a fault; but I really believe that the Finance Committee has a different tradition and that that tradition continues and that that tradition is alive and well.

I think it is obvious to all of us how we go to this particular point. It is very hard to find a compromise between losing taxes and advocating taxes. It is a hard compromise. I mean, there isn't any middle ground there that I can see, and that is how we got to this situation.

And as I pointed out a week or so ago, I think basically, from my standpoint, we are going to continue to be at a dead end until the President and until Speaker Wright and maybe Senator Byrd and others decide that we can do business and come up with some sort of reasonable middle ground.

Until that, I think we are kind of at loggerheads; but I just wanted to point out that I in no wise feel that what is happening in this unique situation is the basis of a

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generalization of how the Finance Committee operates.

This is still a committee where there is a tremendous amount of mutual respect between Republicans and Democrats.

The Chairman. Thank you. Are there further comments?

Senator Durenberger. Mr. Chairman?

The Chairman. Yes, Senator Durenberger?

Senator Durenberger. Mr. Chairman, just very briefly on the subject of bipartisanship, the chairman alluded to several of us whose initiatives have been accommodated in one way or another in reconciliation; and that reminded me that some of this on this committee have just come off of about a two-week marathon on the issue of catastrophic health insurance, while you and the ranking member were deeply involved in a variety of other things.

Your delegates, in effect, have been wrestling with an enormous policy issue, and hopefully doing that successfully.

I would just say about my contributions from this side of the aisle, and those of some others, to reconciliation on the spending side, they have been in the context of bipartisanship.

We had the responsibility over here for six years for Medicare reform. That responsibility was shifted by the electorate in 1986. I think we felt it our responsibility to do everything we could to help the majority on this committee continue the leadership that this committee has

shown in health system reform and Medicare reform.

And I think that is just another example of how, in this reconciliation package, while it may look as though some of us may have been contributing more or accommodated more, the reality is that all of this has been done to make the leadership of this committee in some of these other areas meaningful to our colleagues and to the country as a whole.

There hasn't been any partisanship at all.

The Chairman. Senator, let me really echo what you have said on the work that you fellows have been doing on catastrophic and on prescription drugs. Although I was only physically present for part of it, we did make some moves on our side on the bill that I had introduced to change the indexing to try to give you the wiggle room to try to bring out that kind of a compromise.

And there is a case where The White House sat down with us and worked with us. And I think Senator Mitchell, who has spent hour upon hour working with you and Senator Heinz and others, has done an extraordinary job in bringing about that kind of a compromise.

I am most appreciative to each of you in what you have done there, and I think we are going to be able to move to the floor early next week, I would hope, on that and do it productively and save a lot of time on the floor, I hope, by the amount of work that you all have done on the prescription

drug part.

Do we have some further comments concerning what we are trying to do here, on these specific revenue raisers? Are further questions about any of the detail of it?

The Chairman. Yes, on the revenue raisers; and then we can get to the spending cuts next.

Senator Chafee. Are we into the specifics now?

Senator Chafee. I have some questions on these revenue raisers. First, let me say where I come from at this gathering.

I voted for the Gramm-Rudman, with the view that that is the only way we can get some deficit reductions. And it was also my thought that when we came to sequester, Congress would then start paying attention, recognizing that an across-the-board sequester cut just didn't make much sense.

And it was my belief that, when things ended up, there would be some kind of a compromise in which there would be some tax increases; there would be some cuts in specified domestic programs, deeper than in others; and some cuts in defense.

Others have said here that they might not vote for this tax package, but they might vote for it on the floor. I don't know what I am going to do exactly, but I might do the reverse. We can get the tax package out, but if the commensurate cuts aren't done by the other committees and

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nothing else is done, why go forward with it?

Did I understand Senator Packwood to say that the Speaker said there is not going to be any reconciliation bill? Or is that just a rumor?

Senator Packwood. No. In fact, I checked that with one of the people from the press yesterday to verify it.

He said he now does not plan to bring it out before

October 27. There is no deadline at which he has to bring it out at all.

The only deadline--and again, Mr. Humphreys, correct
me if I am wrong--but the only deadline in reconciliation is
for committees to report to their budget committees. There
is no deadling for the budget committees to bring it out;
and therefore, it is sort of a leadership decision as to
when they do bring it out. Am I roughly correct?

Mr. Humphreys. That is right.

Senator Packwood. In both the House and the Senate, any number of committees have simply not reported to the Budget Committee at all, anyway.

Now, when that happens, under the budget law, in theory the Budget Committee of course cannot change what is reported. In theory, they then take a reconciliation to the floor, and they have to offer amendments or motions to recommit with instructions and how they suggest the budget ought to be made up to reach the reconciliation totals.

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In fact, that has not yet ever happened; but in theory, that is what could happen.

But the Speaker has put it off, at the earliest, until October 27; and he is at liberty to put it off again.

Senator Chafee. I have a couple of questions I would like to ask the chairman or the staff. Mr. Chairman, I have a couple of questions.

First, it seems to me if we are going to tighten up on some of the tax provisions, why didn't you-because I wasn't involved--get into the cash basis accounting for family farms regardless of size? I think we have had that as a problem around here. Here, you get the cash basis regardless of the size of the farm; it could be a monstrous thing, and still they are entitled to it.

The Chairman. I will tell you, Senator -Senator Chafee. I am not trying to zing anybody -The Chairman. No, I understand, but I see one of the
members straightening up over there.

(Laughter)

The Chairman, But I must say you were represented at least in part because I can recall there was a movement in the group to put an excise tax on jewelry, and Senator Chafee was quoted at length on that one, and we backed off.

Remember the witness who said it wouldn't work--your witness--and talking about the fact that when it came to

earrings, they would sell one earring at a time and avoid going over the limit. And it was my comment that some 2 customers just wanted one earring, but --(Laughter) 5 The Chairman. I will let whomsoever wants to respond to the question respond to it. Senator Chafee. I appreciate the thoughtfulness you gave to not including the jewelry, but I am just curious. I think this is scandalous--this family farm thing--and again, the size of it, if you just set some kind of a limitation. It just didn't fly? The Chairman. That is right; it didn't fly. understand it is in the House version, is it not--some limitation? I believe that is correct. Mr. Humphreys. That is correct, Mr. Chairman. Senator Danforth. Mr. Chairman, we each got a sort of preemptory strike of one possible revenue raiser. (Laughter) Senator Danforth, I have one. The Chairman, I guess you would. (Laughter)

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Senator Chafee. I have another; I have several things here, and I am not trying to monopolize it, but there seemed to be sort of a deathly silence; and I was prepared to fill this void.

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The Chairman. That has never been a problem around here, but go ahead.

Senator Chafee. In the existing Code, it provides that agriculture and horticulture coops are entitled to the foreign sales corporation export incentives. I would like to also include in that fishing coops—aquatic, if you wish—and I wonder if they could take a look at that. I don't think that is a revenue changer of any consequence.

The Chairman. Let me have a staff comment on that one.

Mr. Weiss. My understanding is that -- as Senator Chafee has stated -- this is a very small revenue loss, virtually negligible.

Mr. Gould. As a matter of policy, but for whatever revenue cost there is—given that agricultural coops are included—it probably makes sense to include fishing coops.

You have a revenue, Randy, you say is less than —

Mr. Weiss. Probably less than \$1 million. Less than \$1 million per year.

The Chairman. Is there comment? It will be a property of the comment of the comme

(No response)

The Chairman. Is there objection? Yes?

Senator Moynihan, Mr. Chairman, do I have the happy understanding that our full committee is now participating in this exercise?

The Chairman. That is correct.

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1 (Laughter) 2 The Chairman. That is correct. 3 Senator Moynihan. Oh, good. 4 The Chairman. Is there objection? You are proposing - 5 such as an amendment to it, are you, Senator Chafee? 6 Senator Chafee. Yes, yes. 7 The Chairman. Yes. 8 Senator Chafee. I am not flying under any false colors I don't want the belief to go abroad that, if this is 10 accepted, I am locked into the bill. 11 (Laughter) 12 The Chairman. Senator, at this point, I would be 13 delighted if you were just considering the bill. 14 Senator Chafee. I am getting awfully close to that. 15 (Laughter) 16 Senator Chafee. But it is going to take more than 17 \$1 million. 18 (Laughter) 19 The Chairman. Let me ask the members. Would you like 20 to cast a little bread on the waters here and see if it returns? 21 22 (No response) 23 The Chairman. I don't see any objection to it. there objection? 24 25 (No response)

The Chairman. Senator?

Senator Chafee. Now, I have one with a little more substance here.

(Laughter)

Senator Chafee. I am not enthusiastic about that telephone tax continuation. We are going through all kinds of efforts in every one of our States for the relief of the telephone situation on the poor. The telephone now is considered an essential. And I notice it picks up \$6 billion.

So, I would like to suggest that we substitute a doubling of the cigarette tax and remove the telephone tax. Where is my ally?

The Chairman. Is that a proposal?

Senator Chafee. Yes, that is a proposal.

The Chairman. All right.

Senator Chafee. And I think we are all familiar with it. That would yield \$8.5, and the telephone tax would take off \$6 billion; and then we would come in \$2.5 billion over currently what we have, and there are some things we might do with that.

The Chairman. All right. We have a vote on the floor, and I suggest we go vote and come right back.

Senator Chafee. We have discussed this many, many times in the past; and I do propose it.

The Chairman. All right. I suggest we go make the vote



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and come right back. We stand in recess.

(Whereupon, at 11:00 a.m., the meeting was recessed.)

(11:31 a.m.)

The Chairman. The committee will come to order. Cease conversation please, and we will get under way.

Senator Chafee has stated his amendment, and he has correctly stated that we are all quite familiar with the issue; and we have discussed the various phases of this at length. I am prepared to vote on it.

Senator Bradley. Mr. Chairman, before the vote, I would like to ask Senator Chafee a question. We are in an unusual circumstance here where we have not had the willingness on the part of the Republican side to vote for the bill out of committee; and that has precipitated our meeting to come up with a bill by ourselves.

I was curious, if your amendment passed, does that mean that you would vote for the bill out of committee?

Senator Chafee. I don't think that is quite a fair question because we haven't seen the other side of the legislation--what is going to happen on it.

I previously indicated a tilt toward voting for the bill, that is, the overall bill; but I don't want to cross my heart and hope to die at this point.

Senator Bradley. As the Senator knows, I have been his

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partner in this effort to get the cigarette industry to pay their fair share for a number of years.

I certainly wouldn't want to see the cigarette tax increased and then the bill in which it was increased not pass out of the committee. That means that you have to be very certain of where votes are on particular questions.

So, I think it is a legitimate question to ask: How many Republican votes does the cigarette tax bring? And that is certainly going to be one of the things that I will try to calculate here in the course of this lengthy debate on this issue that I know that we will have.

Senator Packwood. Mr. Chairman?

The Chairman. Senator Packwood.

Senator Packwood. I don't know how the Republicans are going to vote. I know of only one Senator who isn't here who said he didn't want to be recorded on this at all. I don't know where he would be on the merits of it if he ever had to vote on it.

I am going to vote "no" on it for this reason: it raises more money than the telephone tax does, and that makes the bill an even higher tax bill than it would otherwise be.

I don't want the bill at all, so I am going to vote "no" on the cigarette tax.

As you full well know, this is not a tax that offends me; and I have voted "aye" for it before when it was raised higher

substantially than it is now. So, at some stage, I will be happy to consider it.

Senator Bradley. I certainly think that we ought to double it, and index it frankly; but maybe that is an amendment to an amendment. I also think that we want to wait and see what this brings in terms of Republican votes for final passage.

So, I think that I will probably just keep the suspense rolling for a little longer than one might expect.

The Chairman. We will try to end the suspense, and I am going to try to--I think it is quite possible that we can get out of here before lunch, but I am not sure what time lunch is going to be.

(Laughter)

The Chairman. But we have heard the comments on both sides. Senator, you moved the amendment, as I understand it? Senator Chafee. Yes, I did.

The Chairman. All in favor of the amendment as stated make it known by saying "aye."

(Chorus of ayes)

The Chairman. Opposed?

(Chorus of noes)

Senator Chafee. We had better have a roll call.

The Chairman. All right. Call the roll.

The Clerk. Mr. Matsunaga?

Senator Matsunaga. No. The Clerk. Mr. Moynihan? . 2 Senator Moynihan. Aye. The Clerk. Mr. Baucus? Senator Baucus. No. 5 The Clerk. Mr. Boren? 6 The Chairman. No, by proxy. 7 The Clerk. Mr. Bradley? 8 (No response) 9 The Clerk. Mr. Mitchell? 10 Senator Mitchell. No. 11 The Clerk. Mr. Pryor? 12 Senator Pryor. No. 13 The Clerk. Mr. Riegle? 14 Senator Riegle. No. 15 The Clerk. Mr. Rockefeller? 16 Senator Rockefeller. No. 17 The Clerk. Mr. Daschle? 18 Senator Daschle. No. 19 The Clerk. Mr., Packwood? 20 Senator Packwood. No. 21 The Clerk. Mr. Dole? 22 Senator Packwood. No, by proxy. 23 The Clerk. Mr. Roth? 24 (No response)

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The Clerk. Mr. Danforth? Senator Chafee. Aye, by proxy. 2 The Clerk. Mr. Chafee? 3 4 Senator Chafee. Aye. The Clerk. Mr. Heinz? 5 Senator Heinz. Aye. The Clerk. Mr. Wallop? (No response) 8 The Clerk. Mr. Durenberger? 9 10 Senator Durenberger. No. The Clerk. Mr. Armstrong? 11 (No response) 12 The Clerk. Mr. Chairman? 13 The Chairman. No. 14 Senator Moynihan. Mr. Chairman, if it is the position 15 of our side that we are voting "no," I will vote "no." I 16 didn't get the word. 17 (Laughter) 18 The Chairman. Senator, we are amused at your refreshing 19 candor. 20 Senator Chafee. That is what you call the ultimate team 21 player. 22 (Laughter) 23 Senator Bradley. Mr. Chairman? 24 The Chairman. Yes, Senator Bradley? 25

Senator Bradley. As I understand, there are 12 votes "no." Is that correct?

The Chairman. Yes, that is correct.

Senator Bradley. And the pattern of the committee is that someone would be allowed to vote until 5:00, as long as that does not change the outcome of the vote?

The Chairman. Unless the bill is reported out.

Senator Bradley. And unless that does not change the outcome of the vote. Is that not correct?

The Chairman. That is correct, and unless the bill is reported out prior thereto; then they have to vote by the time the bill is reported out.

Senator Bradley. If that is the case, then I would be recorded as "aye."

The Chairman. All right. Are there further amendments?

Senator Heinz. Mr. Chairman, I would like to ask some questions about some of the pension funding decisions or recommendations, if this would be an appropriate point.

The Chairman. Yes, that would be appropriate. We did not discuss the pension benefit guarantee corporation approach, as I recall. That has not been discussed, has it?

Mr. Gould. It was briefly referred to and touched on.

The Chairman. All right, then, Senator. Go ahead.

Mr. Wilkins. I believe all the members have a more detailed description in front of them.

The Chairman. All right.

Senator Heinz. Mr. Chairman, what the committee has done is available to us; and I know, for example, that there is a variable premium that starts with a \$14.00 participant flat premium for all plans with a funding charge of underfunded plans of \$6.00 per thousand of underfunding, with a cap of—as I understand it—\$70.00 per participant; and indeed, that is lowered for plans fully funded in recent years.

The Finance Committee proposal, therefore, will give underfunded plans with the highest premium payments of any PBGC premium adopted by any committee; that includes Ways and Means or House, Senate and Labor.

Now, that may end up being reasonable, but I do have some concerns about an approach that will put additional taxes on those companies that are least able to afford funding their plan, not just as a matter of equity, but it may precipitate the one thing I would think no one would want to precipitate, which is pushing more of these companies over the cliff into the laps of both Chapter 11 and the Pension Benefit Guaranty Corporation, which was—as all of us will recollect—exactly where the LTV Steel Corporation was only a few weeks or months ago.

There is another provision also here that I need to understand the thinking behind; and that is there is an

elimination of the tax deduction for contributions that would increase plan funding above 150 percent of termination liabilities. As I understand it, plans would only be able to fund to pay benefits at current salaries, that is, assuming termination today plus a 50 percent buffer.

Have I got that correct?

Mr. Hardock. Yes.

Senator Heinz. Now, I have a concern about that, if I understand it correctly. The effect of this would be to increase the cost for pension plans by increasing not only PBGC premiums and forcing faster funding, but we are also here hitting up the pension system for more revenue.

And my question is: Why are we doing that this way?

And if we do it this way, are we not discouraging either

the formation of these defined benefit plans or encouraging

more of those plans to go out of business?

Mr. Hardock. The proposal would basically say that a plan which is over 150 percent of its current liability would not be able to put more money in.

The theory behind the proposal is that we are giving companies a tax incentive to fund their plans adequately, but that plans that exceed their current liability by that amount, or that level, should not be given the continued tax incentive to basically overfund their plan.

It is interesting that many companies have been arguing

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that a 25 percent cushion is sufficient to protect the plan and that assets could be withdrawn if the plan assets are over 125 percent of current liability.

This is well beyond that. Certainly, if a 25 percent cushion is sufficient to allow withdrawals, which a number of people have proposed but is not a part of this package, then 50 percent seems like a reasonable figure.

Senator Heinz. Mr. Chairman, if I might ask an additional question?

The Chairman. Yes.

Senator Heinz. Is it true or not that some plans that do not have surpluses in an ongoing plan may be prevented from making contributions to their pension plan if we adopted this proposal?

Mr. Hardock. Clearly, the revenue raised is the result of certain companies not making contributions to plans and conceivably they would not be at 150 percent of a long-term liability, based on when the benefits will be paid.

However, the company would always be able to put in enough money to get up to 150 percent of current liability, which means that at any particular time the beneficiaries in the plan are completely protected; there is a 50 percent cushion, and the PBGC is also protected.

Senator Heinz. There are two different levels that we are dealing with. One is a level we call plan termination

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liability, which is what the 150 percent--as I understand it --is geared to.

Another level is what we might term the ongoing liability for benefits. Now, could you set forth for us the extent to which those are not the same and, most importantly, the extent to which the latter often exceeds—as it is my understanding that it does—the former?

Mr. Hardock. The latter will almost always exceed the former because it includes future benefit accruals for years of service that have not yet accrued under the plan or salary improvements that are assumed in funding the plan on a long-term basis.

The former basically measures the degree to which the plan has funded the benefits that have accrued to date, and that is one of the reasons you have a 50 percent cushion.

That is why it goes to 150 percent—to make up for some of that difference between the liability for future benefits, the long-term liability and the current liability.

Senator Heinz. But as you have said, there will be some plans which, although they will bump up against your 150 percent cap, in fact will be underfunded even if funding at the maximum level because of the accrued benefits that they will be liable for and which this provision will effectively discourage the funding of. Is that not correct?

Mr. Hardock. The funding well in advance of when the

money is needed to pay the benefits will be discouraged.

Those benefits would still be funded under the current law rules when the money is needed to pay the benefits.

Senator Heinz. If we assumed that those companies are going to be able to or will fund those benefits on an accelerated basis.

Mr. Hardock. That is true.

Senator Heinz. Yes. Mr. Chairman, I know this is an arcane and technical issue, but it is not technical if, in trying to raise some revenue to meet a reconciliation target, we create the result of having plans either not be created or become premature wards of the PBGC or lead to a circumstance where we create a disincentive for companies to underfund their plans.

And I am concerned about the net effect of this proposal, and I want to go on record as opposing it, as I do the former. Although I would be prepared to offer a motion to strike it, I don't happen to have a source of revenue in my hip pocket to make up for it.

I wouldn't want to do that, but I think this needs a lot of work. I don't think it is right yet.

The Chairman. I thank the Senator for his comments.

When I first went on this committee, we formed the Pension

Subcommittee; and I got very deeply involved in it. I was

one of the principal authors of ERISA and in the founding of

the Pension Benefit Guaranty Corporation.

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I think the concerns that you have commented on are legitimate concerns, but I think that we have a reasonable compromise here and that they have been addressed.

I would assume that each Senator might have a different version of the concerns, but a great deal of work was done and a substantial amount of negotiation with various pension groups and corporations that have pensions.

Are there further comments on this issue?
(No response)

The Chairman. If not, let's move on.

Senator Baucus. Mr. Chairman?

The Chairman. Senator Baucus?

Senator Baucus. Mr. Chairman, I have a very minor modification to the miscellaneous provisions. Those provisions include an amendment of mine which allow the production credit associations the same loan loss reserve treatment as small banks. It was drafted inadvertently which would not allow that treatment for PCAs while they are PCAs.

There is a particular agriculture association that is no longer a PCA but should be allowed that treatment while it was a PCA. I just ask for that modification.

The Chairman. Is this a revenue loser or not?

Senator Baucus. No.

The Chairman. Because I want it understood that we will not be accepting any amendments that are revenue losers that don't have a compensating, offsetting balance to them by revenue raised.

Senator Baucus. It is my understanding that it is not, from the staff.

Mr. Gould. Could we look at the possible revenue consequences for just one moment, Senator Baucus?

Senator Baucus. Yes.

Mr. Gould. As we understand the amendment, you would merely apply the new rules that we are adopting for farm credit banks to, in effect, the loans of what used to be a farm credit bank --

Senator Baucus. In which it was a farm credit bank; that is correct.

Mr. Gould. The amendment seems to make sense. Randy will just need to make absolutely sure that there is not significant revenue loss.

The Chairman. Let me ask on one point. Do I hear from staff that the only question in their mind is the revenue question?

Mr. Gould. I think that is right, Mr. Chairman. The proposal would be to allow the same treatment that the committee decided on tentatively yesterday, which is to allow farm credit banks to have the reserve deductions that

small banks are entitled to, essentially allow that treatment for the reserves. I think it is an agricultural bank that

used to be a farm credit bank--only for those reserves.

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The Chairman. Then, let's approach it this way because I really would like to move through this piece of legislation. I hear no objection to it. Staff seems to think it is all right. If there is not a revenue loss, then we will accept it.

Is there any objection to that?

(No response)

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The Chairman. If not, all right. Senator Moynihan? Senator Moynihan. Mr. Chairman, the front page of The New York Times reports today that as a pre-Thanksgiving notion, the Administration has decided to reduce the benefits of any person who is blind, aged, or disabled and is receiving supplementary security income, that any food packages they may receive from Catholic charities will be instantly taken away from them and deducted from their benefits.

And it doesn't say here, but it is my clear understanding that all the money that is taken from the blind will be allocated to this space defense initiative, and there is a reason; you know, there is logic to it.

If we can just keep them alive long enough that we can continue to deduct from them, then we may beat the Russians

after all.

May I point out, Mr. Chairman, that this was done with a measure of contempt for this committee by the Social Security Administration? The disregard expired at the end of the fiscal year, yes. We have fully intended to continue it. The legislation before us continues it.

If I could draw attention to it--if anyone in the audience wants to know--under the Finance Committee's special spending provisions, Item No. 112, which extends the energy and in-kind disregard of \$100 million a year, we have fully intended to do this. The House intends to do it.

The Administration sneaked past this committee those regulations, and that is shameful. I so want to state. If anyone wants to disagree, I would like to hear.

Thank you, Mr. Chairman. I just want to note that the provision is in the bill.

The Chairman, Thank you,

Senator Bradley. Mr. Chairman, we touch on the railroad retirement tax. One of the things we do is, in the bill, we establish a seven-member commission that represents rail, labor, management, general public.

And one of the areas that is absent is a representative from commuter rails; and I wonder if we could add one member to the commission from commuter rails?

The Chairman. Does staff have a comment on that?



Mr. Humphreys. I don't think there would be any problem with that. It is just adding a member to a commission; that is to study the future funding needs of the rail program.

The Chairman. Is there any objection by any member of the committee?

(No response)

The Chairman. If not, it will be accepted.

Senator Durenberger, Mr. Chairman?

The Chairman. Yes, Senator Durenberger?

Senator Durenberger. Mr. Chairman, I have a couple of questions about the item contained on page 22 of the revenue reconciliation provisions, the repeal of the hospital insurance wage base limit.

The first question is that, on January 1, 1988 by current law, I understand the cap rises to \$45,000. Am I correct on that?

The Chairman. That is correct.

Mr. Gould. That is correct.

Senator Durenberger. On January 1, 1988, the tax rises to what figure?

Mr. Wilkins. I believe the Medicare tax itself does not rise. There is an increase in the old age tax.

Senator Durenberger. And what does that amount to?

Mr. Weiss. The old age tax goes up from 5.7 percent to
6.06 percent next January.



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Senator Durenberger. And how many dollars does that raise? Does anyone have that ready estimate?

Mr. Weiss. That figure is available; I just don't have it right here.

Senator Durenberger. All right. The next question:

In current law, are there any rate increases built into the

Medicare payroll tax currently?

Mr. Weiss. No, there are not.

Senator Durenberger. The next question: How many dollars under existing law--how much revenue is raised by the Medicare payroll tax in fiscal year 1988? And what are the projected outlays in reconciliation in the Part A or outlays from the trust fund?

Mr. Wilkins. Is the question: What are our reconciliation instructions for cuts in our jurisdiction?

Senator Durenberger. I am trying to get the difference between what current law will raise from the payroll tax for the Medicare trust fund this year and what we are obligating for expenditure from that trust fund.

Mr. Wilkins. We are trying to put that together right now, Senator.

Senator Durenberger. Is it not true--for any of you who might be an expert on the impact of the 1983 legislation-that the payroll tax which goes up substantially in general
--Social Security, payroll tax, disability tax, and the

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Medicare trust fund tax--during the period over the next 20 years or so, or perhaps the next 15 years--and you can correct me--raises a substantial amount of money from the payroll tax in excess of the monies needed for either Social Security cash payments or disability payments or for the Medicare trust fund?

My impression is that of all three funds, the ones that the Social Security trustees concern themselves about reaching deficit most quickly is the Medicare trust fund, and that the last projection under current legal rise for the point at which we reach the so-called bankruptcy is around the year 2000 or 2001 or something like that.

But the reality appears to me to be that we have put in place for the next 15 to 20 years a payroll tax on Social Security that raises huge amounts of money in excess of the dollar amounts that are actually needed to pay benefits.

And one of the reasons we have done that is that somewhere out in the year 2010, we expect the demographics to change in terms of who pays tax versus who benefits and, at that point, we want to start drawing down this fund; but the reality is that, for the foreseeable future—the next 15 to 20 years—we don't need an increase on workers in America, regardless of their income level, in order to finance the designated purposes of these taxes, which is social

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insurance payments, disability payments or Medicare Part A payments.

Is that not a generally correct characterization of the current status?

Mr. Wilkins. Let me just generally make the comment that the Administration has proposed increased funding for a couple of other programs that are projected to get to the bankruptcy point at about the same time. The PBGC fund is one, and the railroad retirement fund is the other.

So, for funds that have a similar funding outlook, they have increased funding to improve the soundness of the program.

Senator Durenberger. But what chas that got to do with the Social Security and disability? I understand they may have proposed an increase for some other pension or income security purpose. But what has that got to do with Medicare or the Medicare trust fund?

Mr. Wilkins. I was just making the point that long-term bankruptcy concerns lead to funding needs as well as short-term cash shortfalls.

Senator Durenberger. Does anyone want to indicate whether I am correct in my general characterization of the Social Security and Medicare tax, that it is generating huge amounts of money which are being used by debt in this country, currently incurred? And any increase in the payroll tax,

from wherever it comes, is going to go to buy more of our current debt. That is the way the law is currently constructed.

Mr. Humphreys. It is correct. For the next several years, the funds are running surpluses. The information I have, which is a little bit old, is that the HI fund begins to start declining fairly rapidly towards the end of the century.

The Social Security trust funds in general have traditionally been financed on a long-term basis; and the old age survivors and disability insurance, for example, is slightly negative, not enough that the actuaries are concerned; but pretty much in balance over its traditional long-range funding basis, the income balances the outgo.

In the HI fund that is quite different. The HI fund is quite badly underfunded on a long-term basis; but on a short-term basis, you are correct that, for the next several years, the income to these funds is projected to exceed the outgo.

Senator Durenberger. It isn't just the next several years, is it? It is a long time after I am off this committee that the Medicare trust fund, even by current projections, reaches the point where you have to even consider a payroll tax increase.

I mean, when I got here, we were talking about 1987; and

we have made a lot of changes in the Medicare system. Today, we are talking about 2000 or 2001.

I just want to know why--and maybe I should address this to the proponents--why do we have to raise the payroll tax in 1987, given the condition of the trust fund?

Mr. Humphreys. I don't have the current trustees' report. Last year's trustees' report showed that the HI fund began to have outgo exceeding income in 1995, which is about eight years.

The Chairman. Are there further comments?

Senator Mitchell. Yes.

The Chairman. Senator Mitchell?

Senator Mitchell. Just following up on Senator

Durenberger's line of inquiry, in which I think he made

some excellent points, I would merely want to clarify the

use of the phrase "raising the payroll tax and affecting

the workers of America."

It is my understanding that the change will affect only those persons who, in 1988, have incomes in excess of \$45,000 a year.

The Chairman. That is correct.

Mr. Wilkins. That is correct.

The Chairman. That is right.

Senator Mitchell. It is my recollection from the tax reform debate of last year that of the approximately 100

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million tax returns filed in the country, that only five percent of them report incomes in excess of \$50,000 a year. Randy, do you have a recollection on that?

Mr. Weiss. With respect to this particular proposal, it appears that perhaps it is closer to eight percent.

Senator Mitchell. That is what I was going to say.

Mr. Weiss. Yes.

Senator Mitchell. If it is five percent of households or tax-paying entities reporting incomes in excess of \$50,000, you can estimate that it would be about seven or eight percent which have incomes in excess of \$45,000.

So, the bottom 92 percent of income earners in our society would not be affected by this; and I think they are already paying the full amount. Their entire income is already subject to the tax.

Senator Durenberger. George, would you yield on that point? You are probably correct. The figure is eight million taxpayers or something like that. I wonder if staff can describe for us, since this is a tax on earned income, the nature of the taxpayers who will be subject to this tax compared to a lot of other taxpayers in the so-called high income brackets who will not be subject to it?

The reality is that there is a whole lot of wage income in here for people at \$46,000--the two-worker families and all that sort of thing--struggling to keep ahead in Portland,

Maine and places like that.

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Senator Mitchell. Right.

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Senator Durenberger. On whom this will fall more heavily

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than it is going to fall on somebody who makes \$1 million a

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year in unearned income.

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Senator Mitchell. Excuse me. No, I just wanted to respond. There is no doubt that there is an overlap in

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income categories, and the example you cite surely does

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exist; but I think that we can agree that, on balance, if

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you take the highest eight percent income earners in American

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society in one category and everybody else in the 92 percent

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category, most of the people who would classify themselves

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-- to use the Senator's phrase--as American workers fall in

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the bottom 92 percent of income earners and not in the top

Senator; and I think that Senator Durenberger made a

misstatement, if I understood him. When you get to the

The Chairman. Let me get into another point on that,

two-earner families and you have two of them that are earning

\$44,000 apiece, there would be no increase for either one.

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eight percent of income earners.

Isn't that correct?

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Mr. Wilkins. That is correct.

The Chairman. So, if you had a family there making \$88,000 a year, there would be no increase.

Senator Mitchell. Which makes the point. I think you

made some good points about this, and it is a matter that troubles many of us, having a proposed increase in this tax.

But I think the only point that should be clarified is that this affects only the top eight percent of income earners in our society. It does not affect 92 percent of all taxpayers.

The Chairman. Yes, Senator?

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Senator Moynihan. Mr. Chairman, just one word. The condition of any one of the three funds may be, for example, what HI might be; but if we are to understand the overall condition of Social Security in terms of the accumulation of the three funds, we can kick those percentage points around as we wish.

In fact, in spite of that, the world's greatest bankruptcy--as Mr. Stockman predicted--did not take place on October 1, 1981, nor will it ever do that.

The Chairman. I would like to get on to the spending side as soon as we can finish this.

Senator Durenberger. Yes. Just a final comment, and this more contributes to the record because I don't want to be close-minded on this subject. I admire what you all have been able to accomplish in a relatively short period of time, but this opens up an area --

The Chairman. Senator, you ought to. There is a big piece of you in this.

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The Chairman. Yes?

Mr. Gould. Mr. Chairman?

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Senator Durenberger. Thank you very much. (Laughter)

Senator Durenberger. I feel myself being twisted.

Senator Bradley. Conflicted, did you say, or twisted? Senator Durenberger. And I don't have an alternative to offer you here, but it seems to me that one of the good

things that we have been talking about is income relating this Medicare benefit; and that is reflected in the work that the chairman of this committee did on catastrophic.

But you are not accomplishing that by taking the cap off on the pay inside because not everybody consumes the same amount of hospital benefits; but there is only so much that anybody consumes.

And I think the purpose of having put this cap on the payroll tax, on the Medicare side in the beginning, was to reflect the fact that you should only have to pay for what you get.

In effect, you are making a major policy change in the theory of taxation for Medicare when you take off the cap, and I trust that you have given some thought to that.

The Chairman. Thank you. The Senator has well stated his position. Are there any further comments on the tax side of this?

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Mr. Gould. Before you wrap this up, there are two clarifications or clerical changes that have been brought to our attention, one by Senator Worth and another by Senator Childs.

The Chairman. Yes.

Mr. Gould. They would merely change the descriptions of a couple transition rules that were in the Tax Reform Act. One merely changes a date that said the day of a city council meeting from December 9 to December 13; and another one changes a date of a public hearing from November 14 to November 13; and they are clearly technical corrections.

The Chairman. Any objections?

(No response)

The Chairman. If not, they are adopted.

If there are no further comments on the tax side, let's get a presentation on the spending side.

Mr. Wilkins. Mr. Chairman, at this point, maybe it is appropriate to ask generally for staff drafting authority to make the provisions operate smoothly and to bring any provisions into compliance with the Budget Act on the floor.

The Chairman. Is there any objection to that?

(No response)

The Chairman. If not, it is authorized.

I would say to the members here that I think we are going to finish up rather quickly because both sides of the

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aisle have had the spending cut projections for quite some time and have been heavily involved in it. And the staffs have been heavily involved in it.

Senator Packwood. I might add that I think we understand this side pretty well, I believe from our side. I don't think there are any comments or questions about it. I am going to vote "no" on the bill, Mr. Chairman, but I hope you can get it out before your quorum disappears.

Senator Bradley. Mr. Chairman, I think everyone has real familiarity with what is on the spending side.

The Chairman. Good. Senator Riegle?

Senator Riegle. Why is it necessary to go through an explanation? Why not just accept it?

The Chairman. All right. That is fine. I am ready to vote it out then, if you are.

Senator Chafee. Mr. Chairman?

The Chairman. Yes?

Senator Chafee. Mr. Chairman, I have a couple of questions. We don't need to go through it.

The Chairman. All right.

Senator Chafee. I must say you folks are much more familiar with it than we are.

The Chairman. I must say to you, Senator, you have had this one for a long time; and the staffs have been working together on both sides of the aisle, but go ahead.

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Senator Chafee. On the hospital reimbursement, the package would only give the hospitals a one percent increase next year, and that is really very, very difficult for the hospitals in my State. I know nothing about other States.

I know there is a variation that is in there for so-called rural hospitals, but the situation we have is that we really are approaching a situation where one of our major hospitals may close. They are losing an awful lot of money; now, I don't want to say they may close, but they are just losing an awful lot of money because they have a high occupancy rate and a very high Medicare population, much higher than the national statistics, because our State has the second highest elderly population of any State in the country.

What I would suggest is that those hospitals which are in States which have more than 50 percent--are the Medicare people here, the experts?

Mr. Wilkins. Anne Weiss from our staff is here, and Ed Mihalski from the minority staff, and Marina Weiss is on the way.

Senator Chafee. All right. Those States which have more than 50 percent of the reimbursement for Medicare and where a hospital has more than 50 percent Medicare reimbursement—in other words, you have the two-gate process—that those hospitals could go up to the two percent. We are

really in a very, very difficult situation. We have been doing this and going right along.

You know, every year we hit the providers, and that is fine; it seems to work out all right, but now we are coming to the fellow who every day fed his horse one less straw of hay, and he just got it down to zero when the horse died; and we are close to doing that here, I think.

I wonder if it would be possible for them to take a look into that suggestion and possibly do something about it?

The Chairman. Senator, we looked at many gradations of it, and we had many questions about regional changes; and what you have seen is one concensus that was achieved after visiting with your staff and all staffs of the members of this committee over a substantial period of time.

Go ahead; you have some comment on it?

Ms. Weiss. Senator Chafee, we did request the Administration to look for us at how many States and how many hospitals that proposal would involve. I think the Administration spokesmen are on their way, and I don't know if they have been able to get that information; but our first step to have a sense of how many hospitals and how many States that would affect, partly so that we could ask CBO to assess the budget implications of it.

Senator Chafee. I am just very worried about it.

The Chairman. I understand the concern, and I have some

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of the same problems. I think we will obviously have some differences with the House, and we can bear those in mind.

I doubt that the committee is prepared to change the formula at this point. Are there further comments?

Senator Durenberger. Mr. Chairman?

The Chairman. Yes?

Senator Durenberger. I have two other points to raise on Medicare, if we are waiting for somebody.

Senator Chafee. Have we finished this one? Or where does this one lie now?

Ms. Weiss. If the staff could have --

The Chairman. Let me say this, Senator. If you would like to make a proposal we can vote on it, up or down.

Senator Chafee. The trouble is that I don't know the revenue implications. Maybe we had better wait until the Administration gets here.

The Chairman. All right.

Senator Durenberger. Mr. Chairman, there are two items that I have discussed with your staff this morning. an issue that comes around every single year, and that is a provision which we usually have in reconciliation to terminate the Secretary of HHS's authority to conduct demonstrations involving competitive bidding for clinical laboratory services.

We stopped it in COBRA. We stopped it in OBRA. It keeps

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coming back. The House has a provision for a two-year moratorium, and I am just offering or suggesting that we put in language in reconciliation that would terminate the Secretary's authority; or if you are not willing to do that, to at least adopt the two-year moratorium language that is in the House bill.

The Chairman. Staff?

Ms. Weiss. Senator, we were made aware of that this morning; and my understanding is that it would be included in the package.

Senator Durenberger. All right. And the second point, Mr. Chairman--and I thank you very much--the second point is with regard to a bill introduced by a number of us which would provide for payments to certain rural hospitals, nonprofit or public, with fewer than 100 beds \$50,000 a year grants for up to two years to provide planning money for changing the nature of the business that they are in.

All of us are experiencing this revolution in small hospitals where they are trying to change what they are doing so they can stay in the communities.

The bill is cosponsored by Senator Dole, Senator Mitchell, Senator Lugar, Senator Pryor, Senator Riegle, Senator Danforth, Senator Heinz, Senator Kassebaum, Senator Hatch, and a number of others.

It doesn't have, a dollar implication here, as I

understand it, we would be merely authorizing it. It has a \$15 million authorization nation-wide. It is one of those amazing little things that doesn't cost much money, but in certain communities it means a tremendous amount.

And I think the dollar problem gets shifted off to the appropriations process, rather than to us.

The Chairman. Dr. Weiss, if you would comment?

Dr. Weiss. Yes, Mr. Chairman. We could include in the package an authorization for expenditure of those funds, and it would not have a dollar implication insofar as your package is concerned. Those would have to be appropriated dollars.

The Chairman. Is there objection? Comments?
(No response)

The Chairman. If not, we will adopt it then. All right. Senator Durenberger. Thank you, Mr. Chairman.

The Chairman. Senator Mitchell?

Senator Mitchell. Mr. Chairman, I just wanted to make a comment on one aspect of the package. Earlier this year, I joined with Senator Bradley in introducing the Medicare Home Health Services Improvement Act of 1987, and I am pleased that most of the provisions of that bill have been included in this package.

I am disappointed that the provision which would recognize occupational therapy as the fourth skilled service, which

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would qualify beneficiaries for the home health benefit, was not included.

It is my understanding that CBO in its preliminary indication was that the cost of such a provision would be substantial; and for that reason, it was not included in the package.

I ask that CBO be directed to continue research on this issue to determine the extent of utilization and increase in cost in delivering occupational therapy services at home so that this committee may have an opportunity to review and hopefully include such a provision at a later time.

I have requested that CBO be directed to continue research on the issue which I raised, Mr. Chairman, so that we can have perhaps a more precise estimate and be able to reconsider it at a later time.

The Chairman. I assume there is no objection to that.

(No response)

Senator Mitchell. Thank you.

The Chairman. We will accept that. Yes, Senator $\vec{\psi}$ Pryor?

Senator Pryor. Mr. Chairman, thank you. This is a staff request, Mr. Chairman, and this would relate to Item 10--I guess it would be page 10--under Outpatient Radiology.

It has come to my attention that the HCFA figures being

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used to compute the payments under Medicare for the outpatient services are somewhat outdated, and it would be my request that it be called to HCFA's attention and also to request a more updated or more recent figures.

The Chairman. All right.

Senator Pryor. I thank the chairman.

Dr. Weiss. That could be included in the report language. Is that what you would prefer?

The Chairman. Please. If there is no objection, that will be done. Are there further comments?

Senator Chafee. Mr. Chairman?

The Chairman. Yes?

Senator Chafee. I have a question. It seems to me that in here there is a preference created for State organizations to do peer review. Is that intentional, and is that going to restrict it to State organizations doing peer review?

Dr. Weiss. I assume, Senator Chafee, you are referring to the provision regarding reopening of contracts in the event that there is an in-State bid?

Senator Chafee. That is right.

Dr. Weiss. All right. That was an effort to arrive at a compromise that would be acceptable to several members of the committee who have interests in seeing to it that State organizations bidding have an opportunity to compete for the

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Senator Chafee. But it gives them a preference, doesn't it?

Dr. Weiss. No, there is no preference. All that it does is that it opens up the opportunity for the contract to be rebid.

Senator Chafee. But wouldn't they normally have a right to bid? What does it do? It changes something.

Dr. Weiss. Just a moment, please.

(Pause)

Senator Mitchell. May I address that?

Senator Chafee. Yes.

The Chairman. Senator Mitchell?

Senator Mitchell. It is intended to address a situation where an out-of-State organization gets the contract; you have peer review in another State.

Senator Chafee. Right.

Senator Mitchell. That is precisely the situation now where a Rhode Island organization conducts the peer review in Maine. It is a good setup.

(Laughter)

Senator Chafee. And so what?

Senator Mitchell. So, all this says is that if an out-of-State contract is in place, and the contract expires, instead of being automatically renewed if there is an in-State



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organization that wants the bid they have the right to bid on it. It doesn't permit HCFA to just constantly automatically renew these contracts.

And I personally think it is an outrageous circumstance, where the HCFA denies the opportunity for a physician-based organization within the State to have the opportunity to participate in peer review and gets someone else to do it.

That would be tantamount to having someone from Indiana conduct peer review in West Virginia, and I don't know how the Rhode Island people like the situation in reverse; but I can tell you that the physicians and others in Maine don't like it one bit.

Senator Chafee. All you are saying is they have a chance to bid.

Senator Mitchell. That is right.

Senator Chafee. I don't want to contradict you, but could I just ask Mr. Mihalski a question on that? lets the others get into the bidding process?

Mr. Mihalski. Reading the explanation, sir, it says that the Secretary will be required to give additional weight to selecting a PRO to the in-State organization, which would indicate to me that there is --

Senator Chafee. That is even better than I thought it was.

(Laughter)

Senator Chafee. Your explanation fell a little short.

The Chairman. Are there other comments?

Senator Chafee. I don't like the provision. Note that.

The Chairman. Are there other comments?

(No response)

The Chairman. Let me say then that I think we are prepared to report the bill out.

Senator Heinz. Mr. Chairman, I don't want to discourage you, but I have a couple of things I would like to bring up, if I may.

The Chairman. All right.

Senator Heinz. And I don't wish to detain my colleagues.

The first has to do with the nursing home quality provisions in which Senator Mitchell has played such a leading role and which this legislation reflects a good deal of his and my bill, S. 1108.

Mr. Chairman, one thing that the bill does that I think we could improve upon, which has no cost, although I haven't had a chance to discuss this with Senator Mitchell, is that the intermediate sanctions proposed in this legislation and there is a list; and then States are given an option to choose as many or basically none of the intermediate sanctions that they want.

We know that it is sometimes pretty difficult to get

States to adopt these intermediate sanctions because of the

political pressures against them. That is what the General Accounting Office documented for us all too recently in their study.

And I would like to propose that we, in effect, by contract specifically authorize the States to utilize all of the listed intermediate sanctions so that those authorities are not made available to them, as I guess we originally proposed.

The Chairman. Can I have staff comment on that?

Frankly, I am trying not to lose my quorum and get this bill reported out.

Dr. Weiss. Yes, Mr. Chairman. The Mitchell bill allows the States to choose from a variety of intermediate sanctions. We are looking for you right now to tell you what those sanctions might be.

(Pause)

Dr. Weiss. Under the Mitchell bill, the States would be required to impose three types of sanctions: directed plans of correction, the appointment of receivers, and one or more of the sanctions specified in this next list: civil finds, on-site monitoring by an agency responsible for conducting the certification surveys, withholding or reducing amounts otherwise payable to a facility, and any other sanction designated by the Secretary.

As I understand your proposal, Senator Heinz, that would

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Senator Heinz. That is right. To mandate the availability of each of those sanctions. Obviously, it would be up to each State to decide whether in a particular case they would want to use any of them.

Dr. Weiss. So, the issue here then is one relating to whether you would prefer to retain State flexibility or a mandatory system, or a mandatory set of sanctions?

Senator Heinz. That may be right, but it ought to be clear that States are not compelled to use any of the sanctions, but we would make them available to the States so that they would not have to legislate them.

Senator Mitchell. Mr. Chairman, may I inquire of Senator Heinz?

The Chairman. Yes.

Senator Mitchell. Is it your intention to offer an amendment so this is something we may debate, or is it just something you are discussing?

Senator Heinz. No, I am offering an amendment.

Senator Mitchell. Oh, all right. Mr. Chairman, may I respond?

The Chairman. Yes, please.

Senator Mitchell. Reluctantly, I oppose the amendment, and I urge the members of the committee not to accept it.

I have worked very closely with Senator Heinz, who has

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been an outstanding leader in this particular field and in others. I am sorry I was not aware that this was going to come up until just now, but the bill that I introduced—and much of which is included in the pending legislation—is a very carefully balanced compromise involving all interests and is an effort to move forward with some substantial areas of reform.

Senator Heinz has contributed greatly to that effort, and I understand the point he is making.

My bill gives State legislators the list of sanction options to choose from, and I think that, if we start now changing the provisions, I am concerned that we would upset the balance that this legislation seeks to achieve.

Therefore, I would hope that the amendment would not be accepted; but we are going to be at this process for quite a while, and I would hope that I could discuss it further with Senator Heinz and perhaps at some later time try to reach some understanding.

Senator Heinz, Mr. Chairman, if the Senator will yield,

I would be pleased to not insist on the amendment right now.

It worked out pretty well on prescription drugs, I think; but
this is a reconciliation bill, and we may be precluded from

offering an amendment to it on the floor.

Senator Mitchell. Right. Senator Packwood, in his opening remarks earlier laid out what he expected to occur,



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which was a presidential veto and a failure to override, and then we would be back at this process again.

Senator Heinz, I didn't necessarily subscribe to Senator Packwood's scenario.

Senator Mitchell. And I am not agreeing or disagreeing. I think what certainly is possible that may occur, and

Senator Packwood. I am sure of the veto.

Senator Mitchell. Yes.

Senator Packwood. I think I am sure of the override, but I wouldn't swear to it.

Senator Mitchell. I think we all acknowledge that that is at least possible--some would say likely--and I can't assure that. But all I am saying is that, for now, I would feel constrained to oppose the amendment; but having had good experience with Senator Heinz and many others, I would be happy to discuss this at another time.

Senator Heinz. Mr. Chairman, I won't insist on pressing it to a vote because I hope we can work something out, but I think this is something we ought to do.

Mr. Chairman, I would like the staff to comment, if they would, on two proposals: one involving the Medicare home health and the other involving nursing home denial reforms.

One involves physician review of home health care claims denied on the basis of medical necessity and appeal to fiscal intermediaries, and the second that a simple, just plain

English notice of beneficiary coverage and appeal rights for home health and nursing home care be given to patients by appropriate providers when care is sought and by FIs when care is denied.

The first question: Are you familiar with my proposals?

Dr. Weiss. Yes.

Senator Heinz. Second: Have we got a reliable cost estimate as yet? I am advised that CBO now says that there would be no cost counted toward the budget target. I want to be sure that is correct.

Dr. Weiss. With respect to physician review, we were told this morning that the cost would be in the neighborhood of \$5 million.

Senator Heinz. A physician review would be \$5 million?

Dr. Weiss. That was the estimate we were given this

morning. Yes.

Senator Heinz. And as to the beneficiary notice provision?

Dr. Weiss. From the committee's perspective, it would be a zero because it is an appropriated amount of money.

Senator Heinz. On the beneficiary notice provision? Dr. Weiss. Yes, sir.

Senator Heinz. Is that true as well of the physician review?

Dr. Weiss. I can't answer that question right now,

Senator Heinz.

Senator Heinz. I am advised that it is an administrative cost, subject to appropriations action, and therefore would not be counted toward the budget target. Is that correct?

Dr. Weiss. CBO says that is correct.

Senator Heinz. Mr. Chairman, I would urge that we adopt both of these. They will not cost or be scored against us and the Appropriations Committee will ultimately decide whether this is funded, as I understand it.

And I think we all are familiar with the problem we have with the denials of home health care by people who don't know what they are doing because they are well meaning people but they are not medically qualified to look over the shoulder of a doctor.

I think Senator Mitchell's admonition that he wouldn't want someone from Indiana making judgments about Maine--boy, do we have that in spades right now--on the review of home health care reimbursement where the FIs are concerned. They are second guessing doctors using those 4-85 forms, and it is a mess. So, I would hope we could do this.

Senator Mitchell. Mr. Chairman?

The Chairman. Senator Mitchell?

Senator Mitchell. I am sorry I was occupied while

Senator Heinz was making his statement. If you are going

to go on to other things, could I have a few minutes to talk



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with him so I can find out what it is he is proposing and then be able to express a view on it?

The Chairman. Yes.

Senator Mitchell. Or are you near the finish?

The Chairman. I am near the finish. While they are talking, why don't you go ahead, Senator Boren?

Senator Boren. Mr. Chairman, this is a proposal on the spending side which has no cost--I think, in fact, a small saving to the Federal Government--and I will explain it if I can.

There are five or six States which provide optional income benefits -- SSI benefits -- to people in their States who are over the income line. In other words, they are not people who are mandatorily covered under the Federal program.

In some States -- five or six -- have just decided it is their own option to provide additional benefits to them. HCFA has now come in with a proposed regulation that would say that those States -- on that part that is just optional, that is being funded by the State funds -- that they have to also apply the income disregard to the first \$20.00 of income to those people in order to make more eligible for what is strictly an optional program.

And I see no reason to do that. In fact, if these States end up with State funds that we are costing here, it is going to end up with Oklahoma, for example, needing

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\$3 million to do that. What is going to happen is that a lot of those optional State programs will simply be ended, and the Federal Government in the dong run will have to pick up more people probably, ultimately, in their own Medicaid program.

So, I would like to propose that affected States that have these purely optional SSI payments to individuals whose income exceeds the Federal SSI standard will be allowed to determine Medicaid eligibility for these individuals receiving only optional State assistance without using the Federal disregard standard in determining this.

The only purpose I can possibly see as to why HCFA is going to do this is just for some reason of purity of standardization.

I think it is really a hardship on these States, and it is just going to discourage States from going ahead with these optional programs.

It has no cost, as I can see, and maybe a very slight saving down the road to the Federal Government. It saves the States money, but not the Federal Government.

Senator Matsunaga. Will staff comment on this?

Dr. Weiss. Yes, Mr. Chairman. Senator Boren, we have some confusion here with respect to the Congressional Budget Office not being clear on precisely what it was that they were supposed to be costing.

Senator Boren. Yes.

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Dr. Weiss. So, while I believe you have or your staff has an estimate that it would either save or have no cost associated with it, we have Don Muse looking at it right now again to be sure.

Senator Boren. Right. As I say, we are only affecting State money. We are not affecting any Federal money. So, there is no potential way it could possibly cost the Federal Government any money.

It would be a matter of whether or not it is going to save the Federal Government money down the road, as I think they will; but we are talking about State money in an optional State spending program.

Dr. Weiss. Dr. Muse evidently has a couple of questions he needs to ask you for clarification so that he can make that determination.

Dr. Muse. Sir, the way the Federal Government is involved in this at all and why HCFA has some jurisdiction is that if a State chooses to have a supplementary program and a person under that program gets a check, they are eligible for Medicaid; and Medicaid is a federally matched program.

Senator Boren. Yes.

Dr. Muse. As I understand your amendment, in your State if somebody walks in who is \$20.00 over the limit, the State

can choose not to disregard the \$20.00.

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Senator Boren. No, it is the opposite. Yes, that is right. The State can choose not to disregard it.

Therefore making the person eligible?

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Senator Boren. No, it is the opposite. This will

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cause more people to be eligible under what I am proposing.

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In other words, if we are forced to disregard--and right now

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we do not disregard -- but if we are forced to disregard, we

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will make more people eligible.

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That will cost both the State governments more and the

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Federal Government more.

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Dr. Muse. Yes, sir. That is the way I originally

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understood it.

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Senator Boren. That is correct.

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That would save some amount of money in the Dr. Muse.

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States with such programs.

otherwise would be eligible.

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Senator Boren. It would save the States some money, and

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in theory would save the Federal Government some money

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because it would make fewer people eligible. Since it is

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an optional system, it seems strange the Federal Government

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would be wanting us to apply an income disregard to make

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more people eligible for State funds and Federal funds than

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So, Mr. Chairman, I would like to move adoption of the

amendment if there is no objection to it. It simply would

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leave it as it is now, with the States not being mandated to apply the Federal disregard.

Senator Matsunaga. The chairman indicated before he left that he had no objections to it. Any objections to the proposal?

(No response)

Senator Matsunaga. If not, without objection we will adopt it.

Senator Chafee. Mr. Chairman?

The Chairman, Yes, Senator Chafee?

Senator Chafee. I have an amendment which deals with the current system of Medicaid waivers for the disabled. Currently, the way it works is if a State gets a waiver for those cases -- Medicaid cases -- with a physically or mentally disabled person, they can apply Medicaid funds to home care or to community care, rather than just institutional care.

What my bill would do, which is supported by Senators Mitchell, Armstrong, Bradley, and Daschle from this committee, would say that it would change this system and not make the waiver required and would permit the State to provide a host of services, both in the community and at home, for those who are physically and mentally disabled.

The Chairman. Do we have a cost problem on that? Senator Chafee. We actually save some money. CBO says we save money in the first three years.

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The Chairman. I would like the comments of staff on the provision.

Senator Chafee. This is 1673. Go ahead.

Dr. Weiss. Yes. This measure is very controversial. While it does have significant support in the committee, there was some concern, particularly on the part of the Administration, with respect to including this measure in the package.

The bill is opposed by groups of parents who believe that developmentally disabled children receive better care in larger institutions; and the Department of Health and Human Services estimates the cost of the bill at \$800 million in fiscal year 1989 and \$1 billion in fiscal year 1990.

Now, CBO does not concur in that estimate.

Senator Chafee. I think that is unfair. I thought the rules we played by here were CBO estimates; is that correct?

The Chairman. Yes. Generally, I think that is correct.

Senator Chafee. So, thus, to come up with other than that that we cannot rebut or don't know about, I don't think is quite fair; but the CBO says it saves.

The Chairman. Are there further comments on it? (No response)

I understand it is quite controversial, The Chairman. this particular amendment; and I have had quite a number of constituents who so advise me. Are there further comments

on it?

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(No response)

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The Chairman. If not, the amendment is proposed. voting in favor make it known by saying "aye."

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(Chorus of ayes)

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The Chairman. Opposed?

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(Chorus of noes)

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The Chairman. Let me see a show of hands.

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Senator Chafee. We can take a hand vote.

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The Chairman. All for it make it known by saying "aye."

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(Show of hands)

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The Chairman. Opposed?

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(Show of hands)

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The Chairman. Did you get a count?

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Mr. Wilkins. I counted four ayes, six noes.

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The Chairman. All right. The amendment fails.

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Senator Chafee. Mr. Chairman, could we do this? I

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wonder if you would be good enough to commit the committee

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to having a hearing on this at some time? We have had

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hearings in the past, but I would really like to have

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another hearing. This is a big, important measure, I

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believe.

up against.

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am not sure we will get it this year. You know what we are

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The Chairman. Senator, I will be happy to do that.

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Senator Pryor. On the patient needs allowance, it is my understanding that we have found the extra dollars--is that correct?--to increase from \$25.00 a month to \$30.00 a month. Am I correct?

Dr. Weiss. Yes, that is correct, Senator Pryor.

Senator Pryor. And the last change made in that was 1974?

Dr. Weiss. That has not been increased since the program went into effect in 1975.

Senator Pryor. And would this extra \$5.00 be payable in 1988? Mr. Chairman, they can answer that later. We can talk about that later.

The Chairman. All right.

Dr. Weiss. That would be 1988, Senator Pryor.

Senator Pryor. All right. Thank you.

Senator Moynihan, Mr. Chairman, I move the arrangement on 1706.

The Chairman. It is in the package, but we had to work out some of the details.

Mr. Gould. We have worked out some of the details on a proposal that would repeal Section 1706, which is the proposal on the provision that has caused all the furor among computer programmers. It would repeal it effective the first of next year for income tax purposes.

The revenue offset would be the imposition of a





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withholding tax on the contractors who have benefitted by the repeal of Section 1706. That rate appears to be a 10 percent rate, but the agreement would be that that would be adjusted up a point or two if necessary to come within the revenue constraints.

The Chairman. All right. Are there further comments on it?

Senator Moynihan. I thank Mr. Gould.

Senator Mitchell. Mr. Chairman?

The Chairman. Yes?

Senator Mitchell. I was under the impression as a result of the discussion that there would be a compromise proposal made. What we are hearing now is simply repeal of the provision.

Mr. Gould. This repeal of 1706 is only for income tax purposes; and then, in turn, it institutes withholding so that these computer programmers would notlonger be labeled "employees," which they don't want to be labeled "employees."

However, they would still have income tax withholding at a 10-11 percent rate--something in that neighborhood--which, of course, normally independent contractors do not have.

Senator Mitchell. Mr. Chairman, I am not going to object just to hold up these proceedings, but I would just say that this is a very controversial issue. There are two very sharply divergent points of view here; and I understood, based

on the discussion, that there would be a compromise. I don't regard repealing the provision as much of a compromise.

Mr. Gould. In addition, Senator Mitchell, this
proposal would not repeal the provision for blanket purposes
--like a payroll tax would continue to apply. It repeals
it for income tax purposes, but it arguably splits it down
the middle and then applies withholding --

Senator Mitchell. But it places taxpayers in one category for income tax purposes and in another category for other types of taxes?

Mr. Gould. That is right.

Senator Mitchell. I won't object on the grounds that I know you want to get this thing going, but I don't agree with this. And if this matter comes up again, I think we ought to revisit it and discuss it.

The Chairman. Yes. I assume it will be coming up in the conference. All right. Can we have a vote then?

Senator Moynihan. I move the amendment.

The Chairman, All right,

Senator Mitchell. Mr. Chairman, I would just like to say that I have had a chance to discuss with Senator Heinz his two amendments.

The Chairman. Let me get his. He has moved on his now. Senator Mitchell. Oh, I am sorry.

The Chairman. All in favor of the amendment as stated



make it known by saying "aye." 1 (Chorus of ayes) 2 The Chairman. Opposed? 3 Senator Mitchell. No. 4 The Chairman. Carried. All right. Now, let me hear 5 what you and Senator Heinz have been able to work out. 6 Senator Mitchell. Mr. Chairman, I have had a chance to 7 discuss with Senator Heinz, and I believe the amendments R have merit. I am advised that CBO has an estimate that is \$5 million and that, since it is a Medicare administrative 10 cost subject to appropriations action, it would not be 11 counted. . 12 I think that both the amendments have merit. 13 understand the Administration is opposed, however. 14 should be known by anybody who votes on it, if they have 15 to vote. I am prepared to accept and support the amendments 16 that the Senator has offered. 17 The Chairman. Are there objections on the committee to 18 the amendment? 19 (No response) 20 The Chairman. If not, if you will move the amendment, 21 Senator? 22 Senator Heinz. Mr. Chairman, I move the amendment. 23 The Chairman. Yes, sir. All in favor of the amendment 24 as stated make it known by saying "aye." 25

(Chorus of ayes) 1 The Chairman. Opposed? 2 3 (No response) 4 Senator Heinz. Mr. Chairman, I want to thank Senator 5 Bradley and Senator Mitchell most specifically for their help. 6 Senator Bradley. Mr. Chairman? 7 The Chairman. Yes? 8 Senator Bradley. If I could, on page 18, it is simply 9 to give the staff the latitude to describe the publication 10 of home health care policies properly. I think the staff 11 understands the problem on page 18, and it simply would mean 12 rewriting, when the Federal Register publication would be. 13 The Chairman. Is there objection? Does staff have any? 14 (No response) 15 The Chairman. If not, it will be approved? 16 Senator Chafee. Mr. Chairman, if you are going to vote, 17 I would like to make a very brief statement, if I might. 18 The Chairman. All right. 19 Senator Chafee. First of all, I do want to thank you 20 for including some measures in here that I have been deeply 21 concerned with, and I appreciate that. 22 Second, I think there are a lot of flaws in this bill. 23 I think when we keep on a telephone tax but not a cigarette tax, it is not right. I think extending the Medicare tax

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to higher brackets but no Medicare tax on people who are going to use the service, such as State and local employees, I think is unfortunate.

And I must say I think this has been rather an unhappy experience. There have been statements that we have the opportunity to be included, to contribute; but I personally have not felt that way, but I am not going to beat that.

There are many things that I have long believed in that are included in this. So, I am going to vote for this package, but that doesn't mean I am necessarily going to vote for it on the floor.

I want to see what the other committees, whether there are savings in the other committees, how these proceeds that result in additional revenues are going to be used.

So, therefore, while I am voting for this today--that package--that doesn't mean that I will necessarily vote for it when we are finished, that is on the floor.

The Chairman. All right. Thank you, Senator.

With that, we will move the bill; and we will put it to a roll call.

The Clerk. Mr. Matsunaga?

Senator Matsunaga. Aye.

The Clerk. Mr. Moynihan?

Senator Moynihan. Aye.

The Clerk. Mr. Baucus?

Senator Baucus. Aye. 1 The Clerk. Mr. Boren? 2 Senator Boren. Aye. 3 The Clerk. Mr. Bradley? 4 Senator Bradley. Aye. 5 The Clerk. Mr. Mitchell? 6 Senator Mitchell. Aye. 7 8 The Clerk. Mr. Pryor? Senator Pryor. Aye. 9 The Clerk. Mr. Riegle? 10 Senator Riegle. Aye. 11 The Clerk. Mr. Rockefeller? 12 Senator Rockefeller. Aye. 13 The Clerk. Mr. Daschle? 14 Senator Daschle. Aye. 15 The Clerk. Mr. Packwood? 16 Senator Packwood. No. 17 The Clerk. Mr. Dole? 18 Senator Packwood. No, by proxy. 19 The Clerk. Mr. Roth? 20 Senator Packwood. No, by proxy. 21 The Clerk. Mr. Danforth? 22 Senator Packwood. No, by proxy. 23 The Clerk. Mr. Chafee? 24 Senator Chafee. Aye.

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The Clerk. Mr. Heinz? Senator Heinz. Aye. 2 3 The Clerk. Mr. Wallop? Senator Packwood. No, by proxy. 5 The Clerk. Mr. Durenberger? Senator Packwood. No, by proxy. 6 7 The Clerk. Mr. Armstrong? Senator Packwood. No, by proxy 8 The Clerk. Mr. Chairman? 9 10 The Chairman. Aye. And I must say I am just delighted. We have you out 11 for lunch, and we have met the schedule and fulfilled our 12 13 obligations. Thank you. (Applause) 14 (Whereupon, at 12:58 p.m., the meeting was adjourned.) 15 16 17 18 19 20 21 22 23 24

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This is to certify that the foregoing proceedings of an Executive Committee Meeting of the Committee on Finance, held on October 16, 1987, were transcribed as appears herein and that this is the original transcript thereof.

WILLIAM J. WOFFITT
Official Court Reporter

My Commission expires April 14, 1989.