

EXECUTIVE SESSION

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WEDNESDAY, AUGUST 3, 1977

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United States Senate,  
 Committee on Finance,  
 Washington, D.C.

The Committee met, pursuant to notice, at 10:25 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (Chairman of the Committee) presiding.

Present: Senators Long, Talmadge, Nelson, Bentsen, Hathaway, Matsunaga, Moynihan and Danforth.

The Chairman. The Committee will come to order.

Mr. Stern. Do you want to take up the nomination of Mr. McDonald to be Deputy Special Representative for Trade Negotiations?

The Chairman. Is there any objection to Alonzo Lowry McDonald to be Deputy Special Representative for Trade Negotiations?

Without objection, approved.

Getting back to those things we talked about yesterday --

Mr. Stern. In the middle of page 37, reporting on change in circumstances, there were several things you went over but had not decided on.

The Chairman. We can vote on it later on, if you want

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1 to.

2 My view about the Puerto Rican SSI thing, if we are going  
3 to do what we are talking about doing, providing more funds for  
4 the fifty states, then we are not going to be able to provide  
5 \$185 million to extend SSI to Puerto Rico, Guam and the Virgin  
6 Islands. I think it would be a mistake to do that, anyway.

7 I would be willing, if the Committee is so disposed, to  
8 say we will provide them with a more favorable matching formula,  
9 a 50 percent increase in funds. We could justify that.

10 I suggest that we look at that as an alternative to it.  
11 We will increase the fund available to them by 50 percent and  
12 say, instead of 50-50 matching, they will get 70 percent. Let  
13 them put up 30, we will put up 70.

14 That will be a very generous amount to provide to Puerto  
15 Rico.

16 I do think that the SSI program is out of control right  
17 now, anyway. It is not going to help to put it under control,  
18 to lower the great number of people in Puerto Rico in that  
19 program. That is my suggestion.

20 Otherwise, whatever the Committee wants to do is all  
21 right with me.

22 Senator Bentsen. Could we get a little bit of the rationale  
23 behind that, Mr. Chairman, either from you or Mr. Stern?

24 The Chairman. The Department does not favor that, do  
25 they?

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Mr. Stern. No.

Senator Bentsen. I would like the reasons.

Mr. Stern. The basic reasons why Puerto Rico and the territories were not included in the SSI program, when it was first established, were two. Number one, the fact that the territories do not pay taxes into Washington, but keep the money there that they raise; particularly with reference to Puerto Rico, the cost of living is so significantly different that the program would cover almost everyone in the aged category on the island.

It just does not seem balanced compared to other states. I believe those were the two major reasons.

An amendment was offered last year in the Senate by Senator Javits, I believe it was a two to one vote. That pretty much has been the Senate position.

The Chairman. Can I have an explanation from the Department as to why the Department does not favor this, extending SSI to Puerto Rico at this time?

Ms. Ataway. Senator, the Department and the Administration realized the inequity of not having them covered and have said we feel they ought to be covered. It is a question of whether they should be covered by this budget year now, or rather in a comprehensive welfare reform.

We took the position that we preferred to cover them under a comprehensive welfare reform. The decision was not



1 based on the fact that they should not be.

2 Senator Danforth. Would you rather preserve the status  
3 quo or move to the compromise position that the Chairman is  
4 offering at this time?

5 Ms. Ataway. I think we probably would not object to what  
6 the Chairman has proposed at this point. Obviously, though,  
7 we want to have it taken up again.

8 The Chairman. With regard to that \$1 billion in the  
9 Moynihan amendment, the attitude the Department has taken  
10 there, they are in favor of giving the states more relief than  
11 that but they would like to wait until we have the comprehensive  
12 welfare reform.

13 If you apply that same logic to this situation, we would  
14 say we would provide, pending a time when we see the comprehen-  
15 sive bill, when we act on it, we will provide a 50 percent  
16 increase for the funds available in Puerto Rico, providing  
17 fiscal relief to all of these other states in the Union.

18 It seems to me that that follows the same general  
19 logic of what we are doing elsewhere. We are not going all  
20 the way with New York and what the welfare reform recommenda-  
21 tions will perhaps be when that time comes.

22 We are providing some temporary relief to them and to  
23 the other states. It seems to me, if we do what I am suggesting  
24 here, that is the type of thing we will be doing for Puerto  
25 Rico. All right, if you want to do more about those people,



1 we will provide a 50 percent increase in funds and give you  
2 another matching formula. That gives them fiscal relief and  
3 some money to spread around the people, too.

4 I would think short of doing this, what they would like  
5 to do is extend the SSI to everybody. This would be a pretty  
6 good answer.

7 Let me tell you this about the SSI. I know this much  
8 about it, that the Department of HEW has never been known to  
9 be harsh or cruel to welfare recipients of any sort, or needy  
10 people, but for those people who come in and say that they  
11 are disabled, whom the Department does not believe to be  
12 disabled, when they go before a magistrate, the information  
13 I have is those magistrates are adding 50 percent of those  
14 people to the rolls whom the Department does not think are  
15 disabled under SSI.

16 Then if those people appeal it and go the next step  
17 beyond that, take it before a judge, 50 percent of those  
18 that the magistrate did not put on there, the judge does put  
19 on.

20 So 75 percent of the people who come in and say they  
21 are entitled to be regarded as SSI beneficiaries and declared  
22 disabled, 75 percent of the people that the Department does  
23 not think should be on the rolls are added to the rolls.

24 So, in my judgment, that program is out of control  
25 right now. Before we go any further on it, we should look at

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1 the SSI program to see how much we can afford to let these  
2 programs get completely out of control.

3 I am not trying to tighten up on it at this moment, but  
4 the time is going to come when we may be compelled to tighten  
5 up on the program, rather than being more generous.

6 Senator Bentsen. Is your proposal somewhat similar to  
7 what the House has done, extending SSI, but with reduced  
8 benefits?

9 The Chairman.- No.

10 Mr. Stern. The House did two different things. It  
11 extended the SSI program to the territories. Two, it removed  
12 the ceiling on Federal funds for Aid to Families with Dependent  
13 Children, administrative costs and aid to the aged. Of course,  
14 that program would disappear and what the chairman was suggest-  
15 ing, was instead of extending SSI, to raise the ceiling on Fed-  
16 eral funds for the current welfare programs by 50 percent and  
17 increase the matching percent from 50 percent to 65 percent.

18 The Chairman. I would just suggest -- I would like for  
19 our staff to add up all of the welfare type benefits that we  
20 are doing for Puerto Rico right now, take the welfare program  
21 that they are getting, take the \$500 million for food stamps  
22 and anything else that we are participating in at the Federal  
23 level, on the Federal-state support basis, add that up and then  
24 compare it to an average size state -- Louisiana would be a  
25 good one to compare it to. We are an average sized state, and

1 see how it comes out in the computer.

2 You might also compare it to Mississippi. That is a low-  
3 income state, but Puerto Rico is a low-income area, lower than  
4 that. Take a look at how much welfare benefits we are paying  
5 in those states, which states are paying taxes to help support  
6 the whole program.

7 Puerto Rico is not paying taxes to the Federal government  
8 to help support this program, and just give us a comparison  
9 of the benefits, one against the other.

10 I wish the best to the people in Puerto Rico. Like  
11 everything else, we have to have responsibility to the people  
12 who send us here, and let us just see when you add up all of  
13 the benefits and compare them, one to the other, on the whole  
14 total, how much equity there is going beyond what we are  
15 suggesting here.

16 If you do what I am suggesting, it will be very generous.  
17 I can see if somebody hopes to get more and for a lesser figure,  
18 they will never be satisfied.

19 Senator Bentsen. I would like to know how much money we  
20 are talking about if we take your proposal compared to the  
21 House proposal. You are talking about increasing a ceiling and  
22 taking the matching provision up to 50 percent?

23 Mr. Stern. That is right.

24 Right now, the territories get \$26 million at 50  
25 percent matching, so they are getting \$13 million in Federal

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1 money. If you increase that by 50 percent, you go up to  
2 \$39 million -- I am sorry, that is the Federal amount; \$26  
3 million is the Federal amount. So if you increase that 50  
4 percent, you are up to \$39 million. That is an absolute  
5 ceiling with a two-thirds matching.

6 So basically, the greatest possible increase in cost would  
7 be \$13 million under that.

8 Senator Bentsen. A \$13 million increase in cost?

9 Mr. Stern. That is right.

10 Senator Bentsen. How does that compare? Are you saying  
11 \$13 million as compared to the House --

12 Mr. Stern. \$13 million as compared to \$185 million.

13 Senator Bentsen. \$13 million as compared to \$185  
14 million?

15 Mr. Stern. That is right.

16 Senator Hathaway. I think we are going to wait for Bob  
17 Dole to come.

18 Could you go back to the alcoholics and addicts that  
19 we passed over the other day? It seems to me that the  
20 provision now is that the Administration makes the payment to  
21 a third-party. If they consider that the recipient is not  
22 able to manage his own funds, and except in the case of drug  
23 addicts and alcoholics, they cannot make payments to them at  
24 all, and I understand from what the Administration witness  
25 said yesterday, or a couple of days ago, that they would like





1 to take that provision out altogether and they could make a  
2 judgment on whether it was a drug addict or an alcoholic.

3 The provision I am putting forward is the House provision,  
4 which is midway between, which would state if there is a doctor's  
5 certificate saying that it is necessary for the rehabilitation  
6 or his opinion is good for the rehabilitation of the addict  
7 or alcoholic to receive the payments themselves, then they could  
8 make the payments directly to them.

9 That seems to me to be a sensible middle ground.

10 Mr. Humphreys. The staff was proposing not to take the  
11 House provision, but it really probably does not make too  
12 much difference, and we would certainly think that would not  
13 do any great harm.

14 In point of fact, the Administration is now not living  
15 up to the requirements of the law in this area anyway. For  
16 more than half of the drug addicts and alcoholics, they are  
17 simply making the payments directly without representative  
18 payees, without regard to the question of whether there is a  
19 doctor's certificate or not.

20 We do not think it would make too much practical differ-  
21 ence.

22 We would, however, suggest -- we did have a staff  
23 suggestion that the Committee report include language urging  
24 the Administration to make a better effort to comply with  
25 the existing law's provisions. We would like to include that.

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Senator Hathaway. That would be fine.

Do you have any problem with that?

Senator Danforth. No.

Senator Bentsen. Unless there is objection to that, we will accept that modification.

Mr. Stern. If you want to pass over Puerto Rico for a moment, we will be in the middle of page 37, reporting of changes in circumstances.

Senator Bentsen. We will go ahead on that, then.

Mr. Humphreys. This item is one that is not in the House bill. It is a staff suggestion based on the study the staff did on the SSI program at the Committee's direction.

The SSI program has had, since its beginning, a very high rate of incorrect payments. One of the major causes of this seems to be the fact that, although recipients are supposed to be told to report changes when they occur, many of them do not. This may be their age, may be inadvertence, may be intentional. It may be hard to say.

There seems to be good reason to think that if the administration for SSI recipients put in a very simple quarterly, at least quarterly reporting system, where the individual would just send in a postcard saying my circumstances have not changed, or my income has gone up, or whatever, that this could cut down on the rate of errors significantly.

The Administration would be able to them target their



1 efforts at individuals who either did not report, or reported  
2 a change, and would be able to make changes much more quickly.

3 As it stands now, if the individual simply as a negative  
4 thing does not make a report, an error will accumulate for  
5 a year or more before it is caught. We think this would be  
6 a money-saving change and could be done fairly simply.

7 Senator Bentsen. At the present time, there is no  
8 reporting except a voluntary reporting on the part of the  
9 recipient, is that correct?

10 Mr. Humphreys. Correct.

11 Senator Bentsen. You are talking about a procedure where  
12 a recipient would have to respond quarterly?

13 Mr. Humphreys. That is right.

14 Senator Bentsen. As to whether there had been a change  
15 or not, they would have to respond?

16 Mr. Humphreys. That is correct.

17 Senator Bentsen. They would be provided with some  
18 reporting form for that purpose, I suppose?

19 Mr. Humphreys. Yes.

20 We foresee something similar to what Social Security  
21 recipients do now on an annual basis with their earnings under  
22 Social Security where they have some indication of earnings.

23 Each year, they have to send in just essentially a post  
24 card. We suggested this would be a postage-paid thing. They  
25 would not even have to buy a stamp, just check off the box



1 and send it in and failure to get that card is the main thing  
2 that would trigger Social Security in going and checking  
3 on whether there was some change.

4 Senator Bentsen. There would not be an automatic cut-  
5 off, but it would bring about a follow-up?

6 Mr. Humphreys. It would not be an automatic cut-off,  
7 because the existing law, or the court decisions, require  
8 before you cut somebody off, you send them a notice that you  
9 are going to cut them off and give them an opportunity to do  
10 something.

11 If somebody did not send in that card, what would happen,  
12 I imagine the administration would then send them a note  
13 saying, you did not send the card in. If you do not respond  
14 by such and such a time --

15 Senator Bentsen. How many people receive the payment?

16 Mr. Humphreys. 4 million.

17 Senator Bentsen. There would be 4 million reporting?

18 Mr. Humphreys. That is correct.

19 Senator Danforth. What is HEW's position on this?

20 Ms. Ataway. Senator, there is a requirement in the law  
21 now that they immediately must report any change in income.

22 Senator Bentsen. I understand that, but they are not  
23 doing that.

24 Ms. Ataway. They would like to make it stronger, make  
25 it on a quarterly basis. Our feeling is, if they would like



1 make that requirement for immediate reporting, a more  
2 formalized report, we would understand that, but the adminis-  
3 trative burden of processing 16 million cards a year to check  
4 up on people, many of whom do not have widely varied incomes  
5 anyway. These are aged people and disabled people, many of  
6 whom have very fixed incomes. It does not strike us as  
7 being necessary.

8 There are already sanctions in the law against people  
9 who fail to report immediate changes in income. We would pre-  
10 fer to leave it at that.

11 Senator Bentsen. Apparently you have a high percentage  
12 who are not doing it. I think that is correct, that we ought  
13 to require some affirmative action on that.

14 If people have to do that, it puts an additional burden.  
15 I do not know if you need it every quarter.

16 Senator Danforth. May I ask if you projected what the  
17 savings in errors would be as a result of this?

18 Mr. Humphreys. We have not gotten a projection of the  
19 exact savings. There is about a half a billion dollars in  
20 incorrect payments a year going out.

21 One of the major items causing that is nonreporting of  
22 events that should have been reported. By and large, these  
23 payments once made, the overpayments, are never collected.  
24 Even so, we think it is to the recipients disadvantage a year  
25 later for someone to come hounding them for payments that he



1 may not have realized were incorrect.

2 Senator Danforth. A half a billion dollars of overpay-  
3 ments were incorrect payments?

4 Mr. Humphreys. Yes.

5 Senator Danforth. Estimated?

6 Mr. Humphreys. That has been the experience over the  
7 past two years in the program.

8 Senator Danforth. How much of that half-billion is due  
9 to failure to report changes in circumstances?

10 Mr. Humphreys. We do not have a dollar amount. I think  
11 I do have some information on what percentage of the errors  
12 is due to nonreporting.

13 Senator Bentsen. You have not clarified, in answering  
14 Senator Danforth, how much of that is overage and how much of  
15 that is under.

16 Mr. Humphreys. That is overage.

17 Senator Bentsen. Do you have any number at all on the  
18 frequency of change? Would we normally see change material  
19 enough to require reporting on an average of once a year for  
20 people, once every three years, once every six months? Do  
21 you have anything like that?

22 It was stated that the incomes are pretty constant for  
23 most of these people. I am trying to get a feel for that.

24 Mr. Humphreys. I think for the bulk of the recipients it  
25 is true that their income tends to be stable, especially in the



1 aged area; the disabled who make up about half of the population  
2 are more likely to have some changes.

3 I seem to recall that on average, three contacts a  
4 year, an individual reporting some kind of a change. This  
5 might be a change of address as opposed to a change that  
6 would affect benefits payments, although change of address  
7 can affect benefit payments in a number of states.

8 Senator Danforth. You mean there is an average of three  
9 communications a year received from recipients?

10 Mr. Humphreys. That has some sort of an effect on what  
11 they do. That is my recollection of what we were told about  
12 this.

13 Senator Danforth. Are you sure the total program is  
14 \$4 billion?

15 Ms. Ataway. 4 million people.

16 Senator Danforth. What is the total amount of the  
17 program?

18 Mr. Humphreys. I think it is about \$5 billion a year.

19 Senator Danforth. \$5 billion a year. So you have a  
20 10 percent overpayment?

21 Mr. Humphreys. The percent of payments in error in  
22 January to June '76 was 8.2 percent nationally. That is under  
23 their new methodology where they had excluded some errors that  
24 they formerly counted as errors in the first six months of  
25 1976. The incorrect payment rate was 8.2 percent.

1 The staff, examining their methodology, thinks because  
2 of the tolerances that they use, it is probably somewhat higher  
3 than that in actuality.

4 Senator Bentsen. Would the Department care to comment?

5 Ms. Ataway. Just a small comment that may help.

6 The quality control people estimate that only about 50  
7 percent of errors, whether because they were overpayments or  
8 whatever, can be traced back to the recipients themselves in  
9 both SSI and AFDC. Of the amount then that is accountable and  
10 can be made accountable to recipients themselves, it would  
11 be impossible to estimate how much goes back to the failure  
12 to report a change of income in that amount. Particularly with  
13 a population, something like processing the 16 million cards  
14 is not a matter of processing the cards. The old people are  
15 frightened about what happens to their income if they get  
16 an individual piece of paper. They call the office.

17 What we are imposing on these elderly and disabled  
18 people is something that four times a year would result in  
19 increased phone calls to the Social Security office. We know  
20 that from experience.

21 We send them a piece of paper and they call the office.  
22 They are not sure what it means; they are frightened the first  
23 day they will have less money next month. It is not a mechani-  
24 cal thing, having somebody file these cards. The amount of  
25 money we are talking about being responsible in this particular





1 instance is something that it is impossible to estimate.

2 Senator Danforth. About a half billion in overpayments  
3 estimated. Only about a half of that, or a quarter of a  
4 billion, traceable to the recipients, and some of that may be  
5 fraud, right?

6 Ms. Ataway. Some of it may be.

7 Senator Danforth. That portion that is fraud, a card  
8 would not slow it down at all, would it?

9 Ms. Ataway. Not likely.

10 Senator Danforth. Do you have any idea how much of it  
11 is fraud?

12 Ms. Ataway. I am sorry. We do not. We could find  
13 out.

14 Senator Danforth. Do you have any idea what it would  
15 cost to process all of these cards?

16 Ms. Ataway. I asked. They apparently have not worked  
17 anything out. That was when I was informed that we do have  
18 this experience that whenever we deal with this particular  
19 population group of not just having to process the cards but  
20 all of the phone calls and the worried people who show up in  
21 the office who otherwise would not be there. All of this would  
22 add to the cost.

23 Senator Bentsen. I think there is a difference between  
24 affirmatively answering on a card that there has been no change  
25 in income and on the other hand just saying, it slipped my mind.

1 and I forgot to tell you that there was a change of income.

2 No affirmative action required.

3 It seems to me that four times a year is excessive. I  
4 think the Department has concerns there.

5 What if you had it once a year where these people had  
6 to affirmatively state this and you keyed it to their birthday,  
7 for example, which gives you an even workflow back in the  
8 Department, that type of thing?

9 Ms. Ataway. We already do redeterminations once a year.

10 Senator Bentsen. Could you come to the microphone,  
11 please?

12 You do do redeterminations once a year?

13 Ms. Ataway. Yes.

14 Senator Bentsen. Does that mean that you contact these  
15 people once a year?

16 Ms. Ataway. And examine their files and circumstances.

17 Mr. Humphreys. One of our concerns was the annual  
18 redetermination very frequently turns out in incorrect situa-  
19 tions. They have not always been successful in doing them  
20 annually, although that is required.

21 When any individual, even if it were an inadvertent  
22 case, if they find out he has been overpaid for eight months  
23 at \$50 a month, that is a big overpayment to have to pay  
24 back, and what would seem to happen is those that are particularly  
25 conscientious about it would try to pay it back and it would



1 be something of a hardship. In other cases, the payment winds  
2 up not being collected.

3 Perhaps what might be an alternative here would be to  
4 have a once every six month report tried out for a couple of  
5 years with some kind of a study to see how well that succeeds  
6 in catching errors that otherwise would have gone undetected.

7 Senator Bentsen. Let us go about it this way. If they  
8 are doing it once a year, then on a semi-annual basis this  
9 other would be used once a year. In effect you would get it  
10 twice, one affirmative card being sent in, period. You get  
11 one affirmative card being sent in, possibly.

12 What time of the year do you do your redeterminations,  
13 throughout the year?

14 Ms. Ataway. Yes.

15 Senator Bentsen. Throughout the year.

16 Why do we not ask the Department to come up with some-  
17 thing on a semi-annual basis that would give us an affirmative  
18 report by that recipient, by such a postcard, as a further  
19 check; but figure out a way where it may be the birthday, or  
20 whatever, when it does not give you too onerous a burden at  
21 one time to process.

22 Would that be agreeable?

23 Senator Danforth. Yes.

24 I think I would like to see the Department just have  
25 some estimate as to the efficacy of this whole thing, whether



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rather than locking them in in a mandated, semi-annual reporting process --

Senator Bentsen. This would require only one affirmative action a year by the recipient and then the other is the redetermination by the Department themselves, which they do anyway.

Why do we not try that?

Senator Danforth. Without putting anything in the bill?

Senator Bentsen. I do not think we will get it out of the Department.

Senator Nelson, do you have any recommendations?

Senator Nelson. No.

Senator Bentsen. Senator Matsunaga?

Senator Matsunaga. No.

Senator Bentsen. I recommend then that we try to get the one affirmative action, once a year out of the Department instead of this four times a year report which I think is going to be too burdensome.

Senator Danforth. What is the Department's position?

Ms. Ataway. We do not feel it is necessary.

Senator Bentsen. You have a half a billion overpayment that the recipient has something to do with. It seems to me it is a worthwhile try for a couple of years to see if we cannot pick up some of it.

I would recommend, if the Committee is in accord, that we

1 ask for once a year an affirmative report from the recipient  
2 by card and the Department work that out where it bisects that  
3 period of year when you are not redetermining.

4 It is recommended for two years, if the Committee will  
5 agree with that. That is, once a year that it is done rather  
6 than four times a year.

7 Senator Nelson. Is there any way of piloting it?

8 Senator Bentsen. Could we pilot it? I want to see an  
9 effort made on this, so let us tie it down some so that a year  
10 from now we do not find out that the piloting was done in some  
11 time with a couple of thousand people.

12 Ms. Ataway. We would prefer not to do it. If you tell  
13 us to do it, we would do it, and we will make a serious effort.

14 Senator Bentsen. Let us write it in that a pilot program  
15 be done to test the efficacy of this report.

16 Is there any objection to that?

17 Senator Nelson. The pilot might work very well.

18 Senator Danforth. Here is my problem. I just do not  
19 believe that the world is going to be made a better place by  
20 devising more forms, nor am I convinced that money is going  
21 to be saved.

22 I think it is arguable that more money is going to be  
23 spent reading the forms, tracking down the people who sent them  
24 in, policing the forms. It is going to be more than the cost  
25 of handling the mail, it is going to be the cost of doing



1 something, and for a maximum gain, if it were 100 percent  
2 effective and would cost absolutely nothing to do, for a  
3 maximum gain of about a quarter of a billion a year, I wonder  
4 if it is worth the effort.

5 What I would rather see is to give HEW instructions, even  
6 in the bill, to analyze the desirability of such a thing or  
7 whether there can be some method of reducing the error rate,  
8 than to have them develop yet another form for people to fill  
9 out.

10 Senator Bentsen. All of us share the feeling that we  
11 want to cut down on paperwork. We also want to cut out fraud  
12 in welfare to the extent we can.

13 If we eliminate checking, I think that also contributes  
14 to an additional amount of fraud by others.

15 We have finally arrived at what I thought was a compro-  
16 mise, if we do it on a pilot testing and we test the efficacy  
17 of it by that means, and we do it with one voluntary report  
18 made during the year in addition to the redetermining done by  
19 the Department.

20 I think that is a reasonable compromise, to see if it  
21 works.

22 Is there any objection? If not, we will proceed that  
23 way.

24 Mr. Swoap. Senator Bentsen, I may point out to the  
25 Committee that the Department has been conducting pilot projects



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1 in the state of Colorado, among others, on a monthly reporting  
2 of AFDC. I think they have found it to be very cost-beneficial  
3 for the AFDC program for monthly income reporting.

4 You may want to do it in AFDC as well as the SSI issue.

5 Senator Bentsen. We would like the information, to  
6 supplement what we have here.

7 Mr. Humphreys. Before we get to that, we did find the  
8 information that apparently their quality assurance study showed  
9 that something over one-fourth of the payment error is trace-  
10 able to nonreporting of changes by recipients.

11 Senator Bentsen. If we have resolved that one, let us  
12 move on to the next one.

13 Mr. Humphreys. The next item is on page 38 and again  
14 this is an item not in the House bill that the staff is raising  
15 as a result of some of the information we developed in the  
16 study that we did of the SSI program.

17 The present law allows an individual to qualify for  
18 SSI only if his assets are below a certain level. The basic  
19 level is \$1500, but a number of items do not count, including  
20 his house and car and household goods and whatnot.

21 One of the exclusions in the law is an insurance policy  
22 of up to \$1500 face value. That, we believe, is primarily so  
23 that someone who has a little policy that they have set aside  
24 to meet their burial expenses will not have to cash that policy  
25 in in order to qualify for SSI payments.



1           Apparently, for some SSI recipients, they have, instead.  
2 of buying an insurance policy, they put a little money away  
3 in the bank to meet their ultimate burial expenses and they  
4 just have a psychological bar to taking this out and converting  
5 it into an insurance policy.

6           We would suggest not expanding this, but allowing the  
7 individuals, as an alternative to the insurance policy, to  
8 be able to designate up to \$1500 in a bank account as a burial  
9 allowance with the understanding that if any of it is removed  
10 before they die that it would be treated as income and reduce  
11 their SSI payments.

12           We feel this does not really expand eligibility. It  
13 just allows a little bit more flexibility to individuals so they  
14 do not have to do something that basically creates apparent  
15 problems for them.

16           Senator Bentsen, Is there comment on that?

17           Is there any objection to it?

18           If not, we will accept that redefinition.

19           Move on to the next one.

20           Mr. Humphreys. The next item, again, is something not  
21 in the House bill that arises from the staff study. One of  
22 the more or less basic problems we found in looking at the SSI  
23 program is in shifting from the former state welfare programs  
24 to the Federally administrated SSI program, there seems to be  
25 the capacity to deal with emergency situations dropped through





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1 the cracks, in a way. The former state welfare programs were  
 2 designed in a way in which the welfare agency had a caseworker  
 3 very often who was directly assigned to a claimant and could  
 4 vary the grant from month to month if some sort of emergency  
 5 situation came up.

6 The SSI program is much less personal, much more of a  
 7 highly automated income maintenance program that provides the  
 8 same level of payment from month to month and specifically does  
 9 not, and is not, intended to deal with emergency payments.

10 Some states have picked up, just through their general  
 11 assistance, or whatnot, the gap here, and other states have  
 12 not.

13 Without establishing a new, open-ended program, the  
 14 only suggestion staff can see here is perhaps give the states  
 15 the flexibility to handle these one-time emergency payments,  
 16 only for SSI recipients in case they are burned out of their  
 17 apartment, or something like that, through the social services  
 18 program.

19 So we are not talking about regular income maintenance  
 20 payments, but allowing a state to include if it wants in its  
 21 Title XX SSI program, planning to set aside some part of its  
 22 funds to deal specifically with emergency situations faced  
 23 by SSI recipients which could not reasonably be handled through  
 24 their income support.

25 Senator Hathaway. Is there any criteria in the law to

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1 require what emergency situation would qualify for these  
2 emergency payments, or is that left to the discretion of the  
3 state?

4 Mr. Humphreys. I think the staff recommendation would  
5 be that you follow something like the statute on the emergency  
6 assistance program for families which exists in Title IV that  
7 provides a similar type of protection; it says emergency  
8 assistance to needy families means any of the following, for  
9 not more than 30 days a year -- and then it lists: money  
10 payments, payments in kind, other such things. It is fairly  
11 general, except that it allows the Secretary to specify  
12 specific services that would be considered emergency.

13 Senator Hathaway. Like a fire, or something. But if  
14 he loses all his money at the racetrack, is that considered?

15 Mr. Humphreys. That is true. The state would have to  
16 specify the limits. Title IV has a time limit that you can  
17 do this no more than once for an individual in a twelve-month  
18 period, which is a fairly strong limitation on somebody contin-  
19 ually losing their money at the racetrack.

20 Senator Hathaway. You mean, they could get paid once?

21 Mr. Humphreys. If the state wanted to define it in a  
22 way that would allow that, then once a year they would be able  
23 to do that.

24 Senator Bentsen. Before we read that in the newspaper,  
25 let us make sure that someone is kidding on this point.

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1 Senator Hathaway. I am not sure I am, because there is  
2 no criteria there to determine what is emergency. It says they  
3 cannot do it more than once a year. They do not say an  
4 emergency is the following, a fire, death, or something that  
5 would require payment for hardship.

6 Mr. Humphreys. The reason why we are suggesting this is  
7 emergencies are the type of things that are just handled on a  
8 case by case basis, where somebody has to look and say, is this  
9 an emergency? That is why the Social Security Administration  
10 through the Title XVI program has not really adept at this  
11 type of case by case thing.

12 Senator Hathaway. What I am afraid of, if you open the  
13 door to use Title XX money that the definition of emergency will  
14 expand, because the state will have the money to take care of  
15 it. If they do not have the money to take care of it, they  
16 will narrow the definition of what an emergency is, and have  
17 no chance of eroding the amount of money that is in Title XX,  
18 which is not too great.

19 Many social service programs are not funded to the  
20 extent that we would like to see them funded under Title XX.  
21 I would hate to tap Title XX for this purpose.

22 Senator Moynihan. I would like to support Senator  
23 Hathaway and his reference to tapping.

24 Mr. Chairman, this would be the first time that Title XX  
25 monies would be available for cash payments. And Title XX ought

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1 to be a great cautionary tale for us. It started as a little  
2 undernoticed provision in the Social Security law and was  
3 \$21/2billion and went up to \$25 billion when we froze it in  
4 horror. We have many such provisions in the Social Security  
5 law.

6 My personal view is, emergencies, because emergencies  
7 are idiosyncratic and are special, that is what states are  
8 for. That is what counties are for.

9 We have a national law here. I do not think the case  
10 has been made for opening up Title XX for cash payments. It  
11 is a departure which ought to be very seriously considered.

12 Mr. Humphreys. The staff recognizes that there is a  
13 valid concern on opening Title XX. We do have a concern, in  
14 point of fact, there is a lot of pressure for Title XVI and  
15 that really is not a good mechanism for handling case by case  
16 needs to deal with this gap.

17 Perhaps an alternative would be a program to be adminis-  
18 tered, a separate program as a part of Title XVI, to be  
19 administered by the state agencies with separate funding, not  
20 on an entitlement basis. However, we would not want to see  
21 become another open-ended thing that could grow.

22 Perhaps authorizing \$20 million the first year with  
23 50 percent matching, and such sums as might be appropriated  
24 in future years, but under the control of the appropriations  
25 process to deal with this problem of handling emergency



1 situations.

2 Senator Bentsen. Senator Nelson?

3 Senator Nelson. I agree.

4 Senator Bentsen. Senator Danforth?

5 Senator Danforth. Do you have a response?

6 Senator Moynihan. I think Mr. Humphreys has made a  
7 sensible suggestion, putting it in Title XVI and putting an  
8 authorization process in is a real thing. An emergency can  
9 happen to anybody, even at the racetrack.

10 But I think this is a better judgment, Mr. Chairman.

11 Senator Hathaway. Is \$20 million substantiated by  
12 some testimony we have had?

13 Mr. Humphreys. No.


14 Senator Moynihan. Why not say \$10 million the first  
15 time around, and see if it is used.

16 Senator Bentsen. Is there general agreement?

17 We will write it in as \$10 million and we will keep  
18 Title XX a separate thing.

19 Let us go to the next item.

20 Mr. Humphreys. The next item is on page 39. Again,  
21 we are dealing with matters raised in the staff study.



22 This is a special report by the Secretary. The staff,  
23 looking at the SSI program as it is operated to date, found  
24 that there were very serious staffing problems in the program.  
25 There are lots of different reasons.

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Some of it is pure miscalculation as to how long it would take to process the claim, miscalculation as to where the claimants would be. Some of it is subject to internal bickering over what type of employees are to be allowed.

They got wrong staffing patterns.

We think there is very little that can be directly done by legislation to control this, but we think that getting correct staffing is probably going to be an essential part to turning the SSI program back into the type of well-oiled operation that Congress really had in mind in enacting it.

We would suggest simply to ask the Secretary by April 1st to sit down and report on what he sees as the goal from the manpower needs over the next three fiscal years, '79, '80 and '81, to kind of get this out in the open and be able to let us look at what they are planning and what kind of manpower staffing they think would, in fact, be required to bring the program back into a good state of operation.

The second report that we would request the Secretary to make by April 1st has to do with the finding of the staff study that, in many areas, the Administration ran up across statutory problems where they did not like what was in the statute, or felt that they could not administer it.

Instead of coming back for legislation, they made policy by regulations or despite regulations, in some cases, which is really a variance of what the law requires, what the statute

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requires. In some other areas where there is ambiguity it was pretty clearly stated in the Committee reports as to what Congress intended.

We think that, in some cases, it really warped the nature of the program in directions quite different from what Congress intended.

What we would suggest here is a report by the Secretary by April 1st to go back and look at his policy in the program, look at the statute and the legislative history and the specific items the staff raised in the report and report either in specific instances how he plans to bring the program back into conformity with the existing statute, or make recommendations for legislative changes in the areas where he just may think the existing statute is just unworkable.

In general, staff feels this program should be moving in the direction of operating according to a legislative base and this would be a necessary first step.

Senator Bentsen. Is there any objection to that by any member of the Committee who would like to comment on it?

If not, we will ask staff to follow through on that.

Mr. Humphreys. The last SSI item, at the bottom of page 39, has to do with liability for incorrect state payments.

When Congress enacted the SSI program, it provided in there for a somewhat different approach than had been used in the past. Instead of the states administering programs



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1 funded by the Federal government, there would be Federal  
2 administration of programs involving state funding and specifi-  
3 cally the statute authorized the Social Security Administra-  
4 tion in cases where SSI eligibility was tied to Medicaid eligi-  
5 bility to make the Medicaid eligibility determinations on behalf  
6 of states.

7 Secondly, if states decide that the Federal benefits  
8 were not high enough, the statute authorized the states to  
9 enter into agreements with the Social Security Administration  
10 to administer those programs for the states of supplemental  
11 benefits, additional benefits.

12 The statute did not address the question of what would  
13 happen if the Federal government made a mistake in either of  
14 these areas, if there were incorrect payments.

15 We think that was more or less intentional, because  
16 the Administration had strongly supported a move to Federal  
17 administration and had assured the Committee that Federal  
18 administration would be so much better than state administra-  
19 tion. In addition to saving on cost of administration, states  
20 could count on fewer errors made when the Federal government  
21 took over.

22 That turned out not to be the case. At least, the  
23 states were far from convinced that the Federal government was  
24 doing a better job than could have been done.

25 There has been, since the beginning of the program, an



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1 awful lot of dispute between the Federal agency and the states  
2 as to who owes who what. We think this is more than a fiscal  
3 dispute. It really interferes with the operations of the  
4 program. Instead of being able to concentrate their efforts  
5 on running a better program, the agency has to spend a lot of  
6 its administrative energy arguing with the states over this  
7 issue.

8 There are no statutory guidelines in present law.

9 We think that ultimately you ought to get to a situation  
10 where the Federal administration would be improved to the  
11 point where states could say we do not have administrative  
12 costs and the Federal government is operating, probably making  
13 no more errors than we would make, so we would just absorb  
14 whatever the errors are, since it is probably costing us less  
15 anyway.

16 That is what we would set as the situation by 1980.

17 We would recommend by 1979 to put a statutory, temporary  
18 statutory guideline. We would not go before '79, because they  
19 are already operating under contracts, and that probably ought  
20 not to be disturbed.

21 But for 1979, we suggest you set a 5 percent tolerance  
22 level that, if the Federal government makes errors in excess  
23 of 5 percent in state supplemental payments, the Federal  
24 government will pick up the cost. Anything below that 5  
25 percent tolerance, the states would pick up the cost.

1 Senator Bentsen. Is there comment on that?

2 Senator Moynihan. Mr. Chairman, the only comment I have,  
3 we have been looking at a 4 percent goal. Maybe I have an  
4 oversimplified faith in symmetry here. You are the authority  
5 on error rates in large insurance systems. What do you think?

6 Senator Bentsen. I would say 5 percent is a very generous  
7 error limitation. I would certainly be more prone to accept  
8 4 percent.

9 Mr. Humphreys. Apparently that is what the Committee  
10 agreed to in the earlier AFDC amendment. That may be more  
11 appropriate.

12 Senator Bentsen. Of course, private industry is working  
13 for a figure below that. I think that is a modest limitation,  
14 if that is agreeable.

15 Is there objection to that?

16 Yes, Mike, would you like to comment on that?

17 Mr. Stern. No, sir.

18 Senator Bentsen. If there is no objection, we will  
19 accept the 4 percent limitation and put the statutory obligation  
20 on the part of the Federal government in those areas where  
21 the states are above 4 percent.

22 Mr. Stern. We now think you should turn to the Medicare  
23 and Medicaid fraud and abuse, Mr. Chairman.

24 The Chairman. While Senator Moynihan is here, let me  
25 explain this Puerto Rican problem.

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1 In this bill, with the Administration recommending to  
 2 the contrary, we are proceeding on the theory that this money,  
 3 the type of thing that the President urges should be done, that  
 4 we ought to go on ahead with it rather than wait for the  
 5 comprehensive welfare reform bill, which is going to be some  
 6 time. It is not going to happen this year and it may take  
 7 another year after that for it to be fully enforced.

8 The same logic that supports that approach of fiscal  
 9 relief and additional help for the people of New York and these  
 10 other states, supports the kind of approach that I am suggesting  
 11 for Puerto Rico, where we increase the amount of funds that they  
 12 have available by 50 percent and change the matching ratio  
 13 to make it more favorable to them.

14 If we do what the House is suggesting, we deny ourselves  
 15 the cushion we need to fit this thing inside the budget, as  
 16 we do with the Moynihan amendment.

17 It seems to me that we are better off to do something  
 18 where we help Puerto Rico and help them all, and we stay within  
 19 budgetary targets rather than go all the way with Puerto Rico  
 20 and wind up where we are busting the budget, where the  
 21 Administration says, well, yes, they think they are going to  
 22 be in favor of extending the SSI to Puerto Rico, but not now.

23 But the Moynihan amendment -- they think they can  
 24 favor something like this, but not now.

25 It seems to me if we say, all right, we are going to give



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1 them fiscal relief and some money for now, but we are not  
2 going to go all the way with them, and we all talk about that  
3 and we talk about the comprehensive welfare reform, I think  
4 that that is a better approach.

5 Well, they might not be completely happy, but anybody  
6 who gets a 50 percent increase in their check should not be  
7 too unhappy.

8 Senator Bentsen. What is the fiscal impact of each  
9 proposal?

10 Mr. Stern. The House is \$185 million; this approach would  
11 be about \$13 million, I believe.

12 The Chairman. Frankly, if we go for this \$185 million  
13 addition -- is this not right, Mike -- if we go for this \$185  
14 million addition to the Moynihan amendment, we will be beyond  
15 the budget, will we not?

16 Mr. Stern. I think that is right. In working out a way  
17 of fitting in the budget, we assumed you would not be spending  
18 this \$185 million. I think you would be fairly above it,  
19 where now you probably do fit in.

20 The Chairman. I would so move.

21 Senator Danforth. Mr. Chairman.

22 The Chairman. Senator Dole wants to be heard on this,  
23 apparently.

24 Senator Talmadge. Senator Dole is serving in an  
25 Agriculture Committee Conference, Mr. Chairman; he certainly

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1 will not be here today. He is arguing on price supports on  
2 loan levels for wheat. That requires his personal attention  
3 at this time.

4 Senator Danforth. His staff has given me a statement  
5 that he would like inserted in the record, at this point.

6 The Chairman. Would you rather wait and vote on Puerto  
7 Rico later on?

8 Senator Danforth. Do you want to vote the bill out  
9 today?

10 Mr. Stern. You do have some other matters that Senator  
11 Curtis wanted to be here on, access to information.

12 The Chairman. Why do we not wait and have a final vote  
13 on this later on.

14 Senator Danforth. I do not know if Senator Dole wants  
15 it in the record, at this point or not.

16 There are a couple of other points on 7200, before we  
17 leave it.

18 Senator Nelson. Do you want to speak to the foster care  
19 homes, because I have to leave.

20 Senator Moynihan. Senator Danforth and Nelson want to  
21 speak to that.

22 Senator Nelson. Do you have an amendment drafted?

23 Senator Danforth. No.

24 Senator Moynihan. We have an amendment drafted. In  
25 effect, it does not take an amendment. We just do not put

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1 anything in.

2 Senator Nelson. Do we act on that limitation on foster  
3 home size and the 20 percent reduction in AFDC after 1980?

4 Mr. Stern. Yes, that is right. That was a Committee  
5 action, not in the House bill.

6 Senator Moynihan. If I may say, Senators Danforth and  
7 Nelson are asking us to reconsider our decision to go along with  
8 the Administration proposal to make a 20 percent reduction in  
9 payments to large institutions. That is the proposal before  
10 us.

11 Senator Nelson. You conducted the hearings on that  
12 question. There is not any evidence that anybody can find,  
13 none that Senator Moynihan heard, to justify the arbitrary  
14 figure to set the size of foster homes at 25, and if it is  
15 not at 25 by 1980, to reduce the AFDC payments by 20 percent.

16 In talking to the people in Wisconsin, for example, there  
17 are a number of homes that have more than 25 foster children  
18 in the home, but they are in cottage type arrangements of  
19 ten in a cottage with their own advisors. There is no proof  
20 or evidence in any way that three cottages of ten each somehow  
21 or another is a bad number of children to have, a counter-  
22 productive number of children to have, where the number 25 is  
23 a good number to have.

24 I would think that we ought to reconsider that, and then  
25 in the Committee Report request that the Department address

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1 itself to that, and come back in with some evidence that  
2 they can show their case. We can do it later. I do not think  
3 they have made their case.

4 Senator Danforth. I agree, Mr. Chairman.

5 As an example of the effect of this inflexible approach  
6 in Farmington, Missouri, the Presbyterian Home for Children  
7 has 55 children who are housed in seven cottages with eight  
8 children in each house. Four counselors are assigned to  
9 each cottage, with two on duty at all times, as well as one  
10 social worker.

11 This happens to be very much of a first-rate operation  
12 and I was visited by its administrator and I would not like  
13 to see us arbitrarily set a number until we are confident that  
14 this really is a step forward.

15 It sounds rational to want to move from the big institu-  
16 tion to smaller institutions in foster care, but that is so  
17 if you envision big institutions as huge, 19th century  
18 operations.

19 Senator Moynihan. Oliver Twist?

20 Senator Danforth. That is right, Oliver Twist.

21 I do not think that that is right.

22 Senator Moynihan. Mr. Chairman, I sent a letter to you,  
23 sir, and I will see that everybody has a copy of it, reporting  
24 what happened in the subcommittee hearings. The point -- and  
25 I wish the Administration would hear this, and say that Senator



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1 Nelson and Senator Danforth are absolutely right in what they  
2 said, which is that the Administration put before us an empir-  
3 ical proposition: large institutions are not as desirable as  
4 small institutions. And they said, this is so, but they gave  
5 us no empirical evidence. In no way did they attempt to prove  
6 this; in no way do they even cite anybody who thought it.

7 They said, this is something that everybody knows.

8 We tried to get information. The Administration brought  
9 it forth in the tradition pretty well-established at HEW.  
10 They came before this Committee and told us what works and  
11 does not work, and gave not five cents worth of information in  
12 support of their proposition.

13 This is useful to the bureaucracy, because that means  
14 in four years they can come with you with the opposite  
15 proposition and not take back any evidence.

16 We had one person, one of the people in this field who  
17 has a large home -- was there a cycle of fashion, like  
18 hemlines, up-down? He said yes.

19 I said, are you at the bottom of the cycle from your point of  
20 view? Right. I said, in 15 years time will people be coming in  
21 saying small institutions cannot provide the expertise, the  
22 special equipment, the detailed forms of instruction that  
23 large institutions can supply, therefore, small is bad, big  
24 is good? He said, probably.

25 The fact is, if nothing else, just to encourage the

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1 bureaucracy in HEW, we certainly put a lot of money in research  
2 down there and we get nothing from them.

3 I think Senators Danforth and Nelson are right. Let them  
4 next time, even if they have to make up the evidence, at least  
5 let's go through with the motions.

6 The Chairman. That reminds me of the man who went down  
7 to buy crabs. He said, are these crabs fat?

8 This Frenchman said why sure they are fat. He said,  
9 how do you know they are fat, they have hard shells. How do  
10 you know they are fat; the fat would be inside?

11 Oh, he says, my friend, that the crabs would be fat because  
12 of the full moon.

13 He says, what does that have to do with it? When you  
14 have a full moon, the crab can get around at night and find  
15 lots of food; when the moon is down, the crab cannot see at  
16 night to find the food. He can eat 24 hours a day when the  
17 moon is full. When the moon is full, he has to be fat.

18 He went back there a couple of weeks later and said,  
19 are the crabs fat? He said, yes, they are fat.

20 He said, how do you know?

21 He said, because there is no moon. The crabs are fat  
22 when there is no moon.

23 He said, I always heard crabs cannot get around. If there  
24 is a moon, the crabs could go find food at night.

25 He said, my friend, whoever told you that did not tell



1 the full story. The crab has enemies. When the moon is  
2 full, the crab has to stay in his hole. When the moon is  
3 down, the crab can get out to get some food. These crabs are  
4 fat because there is no moon.

5 So it is all according to how you look at it, I would  
6 assume.

7 Senator Moynihan. Mr. Chairman, if HEW at least had  
8 brought that much of an argument --

9 The Chairman. Does HEW care to make an argument?

10 Ms. Ataway. I feel under some burden to make up some  
11 evidence, but I think that I will refrain. Our feeling is  
12 not that there is a magic number. I think we would agree there  
13 probably is not some absolute, perfect number, but as Senator  
14 Danforth pointed out -- and I think the other people who have  
15 been concerned about this -- we want to encourage those places  
16 that are doing things in an innovative and personalized way  
17 to make sure the children do not wind up in Oliver Twist types  
18 of operations.

19 We want to discourage the Oliver Twist institutions.

20 If there is some way to convey that in what you finally  
21 decide --

22 Senator Moynihan. Mr. Chairman, I wonder if Ms. Ataway  
23 who is a very helpful, an extraordinarily helpful, represen-  
24 tative of HEW would not agree, this has to do not with the  
25 size of the institution but the way that you run it.

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1 Ms. Ataway. Yes.

2 Senator Moynihan. We are directing ourselves to the  
3 wrong criteria, size, where the correct criteria is what goes  
4 on in this place.

5 That Presbyterian home, I am sure they break it up into  
6 cottages, they do everything they possibly can to make a family  
7 situation.

8 Ms. Ataway. Senator, we would want to be careful that  
9 by providing new monies we are not in some way encouraging  
10 those who might increase the size of their populations where  
11 it may work to the detriment of the children. In that sense,  
12 we are concerned about size.

13 Certainly the point is we want to be careful. It is how  
14 they operate.

15 Senator Moynihan. It is incumbent upon HEW to keep an  
16 eye on what happens, and come and tell us.

17 The Chairman. Why do we not go ahead and agree to the  
18 amendment. If HEW has some suggestions that would help to  
19 see to it that the children get the attention they deserve,  
20 even though they are in large institutions, they can bring it  
21 to us.

22 We will cooperate with them in that respect.

23 All in favor, say aye?

24 (A chorus of ayes.)

25 The Chairman. Opposed, no?



1 (No response)

2 The Chairman. The ayes have it, agreed.

3 Mr. Stern. It would be appropriate for them to look  
4 at the cost in some of the large institutions. The costs seem  
5 to be very, very high. The cost in Wisconsin is \$14,000 a  
6 year per child; in New York it is \$13,000.

7 These are very high costs in some states. Perhaps they  
8 could look at what the elements of cost are.

9 Senator Hathaway. Are we not going to have some report  
10 language asking HEW what you would like to have them look into?

11 Senator Moynihan. We will do that.

12 Senator Hathaway. That will cover the staffing ratios  
13 and the other things you want to cover.

14 Senator Moynihan. Wisconsin children are notably  
15 incorrigible. You have to incorporate the Wisconsin factor.

16 The Chairman. \$14,000 a child. We should take a good  
17 look at it.

18 'How much is it costing in these smaller institutions?  
19 Do you have any figures on that?

20 Senator Nelson. I would say there are only 450 people  
21 in these homes. They have a high placement rate. Those who  
22 can be placed are placed; many cannot be placed.

23 Mr. Stern. In Wisconsin, it is about \$1,800 in a foster  
24 family home, about \$150 a month if the child is placed in a  
25 foster home.



1 Senator Nelson. What you have to recognize is that  
2 a number of these children -- the reason we only have 450,  
3 they have placed everybody who can be placed.. Some are so  
4 retarded that they cannot be placed anyplace. They have to be  
5 in a home.

6 If you can get down to 450 children in foster homes out  
7 of a population of 4,500,000, I do not know how this provision  
8 would improve upon that.

9 The Chairman. Do we have an estimated cost on that  
10 amendment?

11 Mr. Stern. No.

12 The Chairman. Why do you not try to get it for us? We  
13 can take another look at it later on if we want to.

14 Senator Nelson. This is a reduction in the proposal.  
15 The cost is, what the cost is to date, the proposal is to reduce  
16 it by 20 percent.

17 Mr. Stern. You wind up back to present law. You wind  
18 up not making a distinction in size of institutions.

19 The Chairman. All right. Let us go to the next thing.

20 Senator Danforth. What is the disposal of this?

21 The Chairman. We agree to it.

22 Senator Danforth. All right.

23 The Chairman. What is the next thing?

24 Mr. Stern. Next, we suggest you turn to the Medicare-  
25 Medicaid anti-fraud and abuse amendments.

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Senator Danforth. Before we leave 7200, may I raise one more point?

The Chairman. Yes.

Senator Danforth. The second half-billion dollars under the Moynihan grant to the states provision, that is the incentive to reduce the error rate, my understanding of that provision as it now stands, if the error rate is reduced to 4 percent or less, the states would receive the full benefit, or its share of the incentive payment.

However, error rate, as we presently interpret it, means only overpayment, is that correct?

Mr. Stern. Ineligibility and overpayment.

Senator Danforth. Errors which are underpayments are not included in the computation as it now stands?

Mr. Stern. That is right. While they harm the recipients, it is not an extra amount of Federal money.

Senator Danforth. It would seem to me that if the object is to provide incentives for accuracy and computation, those overpayments and underpayments should go into the computation.

It is my understanding that some projections have been made to the percentage of underpayment. It is slightly less than 1 percent?

Mr. Stern. That is right.

Senator Danforth. If total error rate were included, that

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1 percentage would be increased to 5 percent; all errors, both  
2 overpayments and underpayments would be included.

3 My concern is if you provide only a disincentive of  
4 overpayments, then all questions will be resolved against the  
5 recipients.

6 Senator Moynihan. Ms. Chairman, we discussed this. It  
7 was my impression that the Committee was well-disposed towards  
8 this view.

9 I think you said, sir, you do not want to see people  
10 underpaid.

11 The Chairman. I am not sure I am with you. Would you  
12 mind explaining?

13 Mr. Stern. You have three categories' in the quality  
14 control reports. One is ineligible people. Of course, that  
15 is a form of overpayment, ineligible. Then, eligible but  
16 overpaid. The third category is eligible but underpaid, and  
17 when we were talking before about the 4 percent error rate,  
18 the payment of the second \$5 million would be conditioned  
19 on, that 4 percent was only adding the first two categories, in-  
20 eligible and eligible but overpaid.

21 Those were the cases where the Federal government was  
22 paying too much money to the states.

23 I think that Senator Danforth is suggesting, instead of  
24 4 percent you make it 5 percent and you include all three  
25 categories as a kind of the balance against the state always



1 erring against the recipient on the grounds that you cannot  
2 lose any money that way.

3 The Chairman. Is there any objection?

4 Senator Moynihan. I would like to say that I am in  
5 favor of this.

6 Senator Hathaway. One question.

7 These errors involve court cases where a state in good  
8 faith does not pay a person and they take it to court and they  
9 find out that they should have paid them so they are charged in  
10 error, even though in good faith in the first place they did  
11 not pay them the money?

12 It seems to unduly punish them. I do not know how you  
13 can determine what was in good faith or not.

14 The Chairman. Mr. Galvin, do you want to give us your  
15 thoughts?

16 Mr. Galvin. The amount of money in underpayments is  
17 very small. It has never been more than 1.5 percent of the  
18 error, and for the last year, it has been 0.9 percent of the  
19 dollar error.

20 The figures that you are using at the beginning --

21 The Chairman. You are saying that the amount of money  
22 involved in the underpayment --

23 Mr. Galvin. -- is less than 1 percent.

24 The Chairman. Less than 1 percent.

25 Is less than 1 percent of the error?



1 Mr. Galvin. Is less than 1 percent, of the dollar error.

2 Senator Danforth. Of the error, or the payment?

3 Mr. Galvin. Total dollars it is .9 percent error and  
4 it amounts --

5 The Chairman. What you are saying, if I understand it, if  
6 if you have \$100 in errors, only \$1 of that \$100 represents the  
7 underpayment, is that right?

8 Senator Moynihan. I do not think so, Mr. Chairman.

9 The Chairman. Are you saying if you have a 4 percent  
10 error rate, one-fourth of that error rate, one-fourth of that  
11 in terms of dollars is the underpayment?

12 Mr. Galvin. The underpayment is not considered whatso-  
13 ever in the current dollar error rate.

14 If you had \$100 worth of payments, you would have less  
15 than 1 percent of that as an error, compared to 2.5 percent.  
16 It is very, very small.

17 The Chairman. What you are saying, it is still 1 percent?

18 Mr. Galvin. The comparison in Senator Moynihan's  
19 proposal, if this were adopted, you would have to add the  
20 same percentage which was higher back at the times you have  
21 discussed to that to be able to figure out the second part  
22 of it. You could not just say it is 4.9 or 5.0. You would  
23 have to add 1.5 to the total back in July-December, 1974 or  
24 April-December '73. It has never been counted as an error.  
25 It has always reported. It is counted as a case error.



1 We started the program originally with case errors.

2 The Chairman. Why do we not want to leave it 1 percent  
3 of the overpayments, the ineligibles?

4 Mr. Galvin. The 4 percent?

5 The Chairman. That is what you are looking at. That  
6 is what you want to tighten up on.

7 If, in the course of this, you find that somebody is  
8 underpaid, of course you ought to raise his payment. But what  
9 I think we are trying to do is quit putting ineligible people  
10 on the rolls, also quit overpaying them.

11 Mr. Galvin. In addition, Senator Talmadge's proposal  
12 in the changes in quality control goes to another category  
13 where it would solve another type of management problem that  
14 today has not been considered, and that is it would examine  
15 the cases of percentages <sup>of</sup> the cases that have been denied  
16 on the application of any assistance, or have been terminated  
17 from assistance to see what is the social worker error in that  
18 determination.

19 We have broadened it to find out and clarify it for the  
20 states and HEW if there are any problems in that category.

21 There is no question that they have to be solved, and  
22 we expect the states to solve it. They worked extremely well  
23 in solving underpayments. They have worked fairly well on  
24 solving the ineligibles and the overpayment, but eligible,  
25 case.

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1 Mr. Galvin. In relation to Senator Danforth's, I would  
2 say keep it the way it is now. We are emphasizing the fact  
3 if there is any mistake against the recipient or the client,  
4 this will certainly be more than evident in the proposal that  
5 you have if Congress approves it.

6 The Chairman. Here is the point. We do not want the  
7 states to come into compliance by just leaving the ineligibles  
8 and overpaid people the way they are and by merely paying more  
9 money out to people where they say they have not paid them  
10 enough in the past.

11 It seems to me as though we want them to comply by taking  
12 ineligibles off the rolls in reducing these cases where they  
13 have overpaid.

14 In the course of all of this, when they come across some-  
15 one that they did not adequately pay enough money to, by all  
16 means pay them more.

17 If you look at where the errors are being made, it is  
18 at least three to one in the case of ineligibles or overpaid.  
19 I do not think you can make any case that they are failing to  
20 pay up where an error can be found.

21 I think you had better leave it with the 4 percent the  
22 way we have it.

23 Mr. Galvin. Another argument in line with what you say,  
24 the more money that they go down on the ineligible and overpaid,  
25 the more money they would provide for staffing to do the job



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1 on the other end of it.

2 Senator Danforth. The whole point is, apparently there  
3 is not enough incentive in the present law to reduce the  
4 error rate, and therefore the point of this second half-billion  
5 payment is to provide additional incentive to reduce the error  
6 rate.

7 However, the way it is written now, it is not written as  
8 an incentive to reduce the error rate. It is written to reduce  
9 one form of error ate.

10 My position is to reduce the error rate, not one form of  
11 error rate.

12 Senator Talmadge. I thought it addressed itself to both  
13 of them.

14 Mr. Galvin. It addresses itself to reduce the large-scale  
15 errors in ineligible cases and in the overpaid but eligible  
16 cases. It also, by a more extensive study, continues the  
17 underpaid cases, finds out what the problem areas are in that  
18 and also the denials in applications and termination of cases.

19 Senator Talmadge. That has already been adopted by the  
20 Committee?

21 Mr. Galvin. It has been.

22 The Chairman. He is moving to change it to say that  
23 you raise the figure for error rates from 4 percent to 5  
24 percent and judge by that, and then give them credit for  
25 improvement to the extent that they are paying more money to

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people who are not being adequately paid at the moment.

I understand his argument, but I thought we do provide in the study where they would find somebody underpaid that they would pay more, did we not?

Mr. Galvin. Any case that has been found to be underpaid will be immediately paid.

The Chairman. Here is what I worry about. I worry about them saying, oh, yes, we have complied. There is a high error rate. We are doing exactly what is expected of us. What do they do? They take any ineligible off the roll? No. They comply by paying more money out to people who were not getting enough.

So it seems to me we do better to leave it -- I am willing to live with either way, whatever the majority wants.

Senator Danforth. Do you want to be heard?

Ms. Ataway. Please, it is a small point of information. Let me help you as you are deciding.

Up until 1973, the HEW quality control efforts went after both underpayments and overpayments, just to simplify it. After 1973, they stopped going after errors based on underpayments, and then there was court action taken against HEW as a result of that.

As a result of the court action HEW has now, to bring itself back into line, has gone back to making the point that Senator Danforth raised, namely that it now, as a result of



1 court action, will be instituting quality control to go  
2 after underpayments as equally going after overpayments. It will  
3 bring back more balance in the system.

4 The Chairman. Let me look at it from my point of view.  
5 I do not know why we have to give anybody a bigger reward than  
6 they are doing now for playing Santa Claus.

7 It looks to me that is the fun part of the business,  
8 being Santa Claus. The tough point is being that the tough  
9 so-and-so has to say you are getting too much money, you are  
10 not eligible.

11 What we are trying to do is get somebody to turn in their  
12 Santa Claus costume for a day or so and do something about the  
13 other part of the program. I do not see why you have to give  
14 anybody any more incentive than they have now to go in there  
15 and say, look, we have discovered an error here. You are  
16 entitled to \$100 a month more. Nobody's going to spit in your  
17 eye when you tell him that. He is going to say, hurray, bless  
18 your soul.

19 If you call them in and say look, we discovered an error  
20 in there. You are not eligible. You are lucky if they do not  
21 punch you in the nose at that point.

22 That is the tough job trying to get them to do. Since  
23 the very beginnings of the program we have not had any difficulty  
24 finding somebody to play Santa Claus, the difficulty was getting  
25 somebody to play Scrooge, the other role -- the heavy in the

1 scene, you might say.

2 I thought that was what we were trying to do, trying to  
3 say, look, we know this is not going to be any fun. We will  
4 put more money up to help these needy cases if you will tighten  
5 up on those cases where you have been too lax. I do not see  
6 anything that involves any Constitutional problem in that.

7 Of course, if you find somebody not being paid enough,  
8 by all means take care of it. We are not seeking to reward  
9 them for that. Anybody who finds an error, we would be happy  
10 to do it anyway.

11 I think we would be better to leave it the way it is.  
12 If the Committee wants to do it the other way, it is all  
13 right.

14 Those in favor of the amendment, raise your hands.

15 (A show of hands.)

16 The Chairman. Those opposed?

17 (A show of hands.)

18 The Chairman. The amendment fails. We will leave it  
19 the way it is.

20 What is the next thing?

21 Mr. Stern. We suggest you return to the Medicare and  
22 Medicaid anti-fraud and abuse amendments.

23 The Chairman. Senator Talmadge, this was your amendment.  
24 You might as well preside at this point.

25 Senator Talmadge. Mr. Chairman, the Committee will



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1 recall that my staff has been involved in this area for some  
2 five or six years. It was first called to my attention by  
3 newspaper publications about massive fraud and abuse in the  
4 state of Illinois.

5 I sent the staff out there to investigate it and found  
6 that it was true. We got the General Accounting Office  
7 involved also. They found that it was true. Subsequent to  
8 that time, many of the other committees of Congress became  
9 involved -- Government Operations, the Committee on Aging.  
10 We found massive fraud and abuse throughout the country,  
11 particularly in the Medicaid program.

12 Our staff has worked diligently for several years in  
13 conjunction with the General Accounting Office and other  
14 committees to design a bill that we think will help to eliminate  
15 some of the massive fraud and abuse.

16 We passed a bill last year on the unanimous consent  
17 calendar. The Committee on Finance reported it. We sent it  
18 to the House of Representatives rather late in the session.

19 The House of Representatives has a divided jurisdiction.  
20 The Ways and Means Committee has jurisdiction over Medicare;  
21 the Committee on Commerce has jurisdiction over Medicaid.

22 Due to the lateness of the session and divided jurisdic-  
23 tion, they did not report a bill. We took a portion of our  
24 bill out and passed it, creating an Inspector General in the  
25 Department of HEW and one or two other matters. That left





1 the remainder of the bill.

2 Mr. Rostenkowski, the Chairman of the Subcommittee on  
3 Ways and Means, and Mr. Rogers, Chairman of the Subcommittee  
4 in Commerce, introduced a bill very similar to the one we  
5 introduced last year. I understand it has been reported now  
6 on the House calendar. has it not?

7 Mr. Constantine. Not quite so, Senator. Both Committees  
8 have reported the bill. It is awaiting rules action. They  
9 expect to possibly get a rule this week.

10 Senator Talmadge. Anyway, it will come back to us.

11 What we propose to do is take the bill that we pass with  
12 some modifications and amendments and report that bill to the  
13 Senate. When the House bill comes to us, we propose to strike  
14 out all after the enacting clause of the House bill, substitute  
15 the Senate Finance Committee bill, probably go to the Conference  
16 with them to adjust differences there.

17 This is a bill that has massive support -- how many  
18 cosponsors do we have in the Senate?

19 Mr. Constantine. Upwards of 30, about 33 and there are  
20 some others on the printed bill.

21 Senator Talmadge. At this point, I would be derelict  
22 in my duty if I did not compliment Jay Constantine, Dr. Monick,  
23 Mr. Kerns and others who have worked so diligently in this  
24 field now for several years.

25 I think, Jay, if you will go ahead and proceed as rapidly



1 as you can, I hope we can have this reported before long.

2 I do not think there is anything controversial in it.

3 Mr. Constantine. I guess it depends on your point of  
4 view, Senator. What we have approached the bill with was to  
5 take the House provisions in H.R. 3 as reported by the Committees  
6 and suggest to you those which you would add to the Talmadge  
7 anti-fraud bill.

8 The House did a masterful job, frankly, during the  
9 adjournment period. We worked with Ways and Means and Inter-  
10 state and Foreign Commerce. They substantially improved and  
11 expanded the original anti-fraud and abuse legislation and  
12 held extensive hearings on the matter.

13 Many of these are sections, by the way, that the Senate  
14 has previously passed. Many are expansions on Finance Committee  
15 amendments of the last five years.

16 The first section involves the prohibition of assignment  
17 of benefits to factors. The Finance Committee had cleaned  
18 up that problem in 1972. This is where a doctor will assign  
19 his payments to a factor for collection who will discount it.  
20 It led to alleged fraud in Illinois, prosecutions there and New  
21 York and they found a loophole in the statute using power  
22 of attorney, and this section cleans up that power of attorney  
23 thing.

24 It authorizes the use of power of attorney for bona fide  
25 cases, not for discounting payments.



1 The Congress, in '72, said timely payments of Medicaid,  
2 the first part of the amendment clears up the power of attorney.  
3 The second part would require that states pay 90 percent of  
4 clean claims -- those which do not require further work --  
5 within 30 days and 99 percent within 60 days.

6 We would suggest a modification of the second part to  
7 95 percent within 30 days and 99 percent within 90 days,  
8 conforming to the Talmadge Administrative Reimbursement Reform  
9 provisions from which this was taken.

10 There is the third part which would authorize a lot of  
11 money to teach doctors how to fill out claims under Medicaid  
12 and the staff recommends that that portion of the House bill,  
13 the Committee bill, be deleted. We do not seem to have much  
14 trouble getting claims from physicians. That would cost about  
15 \$5 million a year.

16 So we recommend that the provisions that were in the  
17 Senate version be essentially retained.

18 Senator Talmadge. Is there objection?

19 Without objection, it is agreed to.

20 Mr. Constantine. The next section involves the matter  
21 of disclosure of ownership and financial information on  
22 significant owners of institutions, providers, practitioners,  
23 subcontractors,

24 We have had Senator Nunn and the Government Operations  
25 Committee who has held hearings that has disclosed significant



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1 concealed subcontracting and rate relationships that permits  
2 arms-length transactions.

3 This provision is in both bills, essentially in both the  
4 Senate and House bills, and it requires full and adequate  
5 disclosures of transactions. It is designed to disclose self-  
6 dealing as well as those having a significant operating  
7 responsibility or ownership interest in the facilities.

8 Senator Talmadge. Is there any objection?

9 Without objection, agreed.

10 Mr. Constantine. We had two minor changes. GAO called  
11 our attention to an oversight. They said that the disclosure  
12 provisions should also include health providers under Title XX  
13 because some of them had been kicked out of Medicaid and  
14 Medicare and shifted over to Title XX, providing home health  
15 care as a social service, and the House has suggested there is  
16 a technical error in there that they would like us to correct  
17 to clarify the disclosure requirements so that it applies to  
18 disclosing entities as defined. A technical change that  
19 we would recommend to you.

20 Senator Talmadge. Any objection?

21 Without objection, it is agreed.

22 Mr. Constantine. The penalties for providing Medicare  
23 and Medicaid was a Finance amendment in the 1972 amendments.  
24 It was no specific crime under Medicaid for bribes, kickbacks,  
25 rebates, fraud. We made it a misdemeanor, one year, \$10,000.



1 The U.S. Attorney has strongly urged that that be changed;  
2 in both the House and Senate bills it would be changed to a  
3 felony, five years, \$25,000, and that is consistent with what  
4 the Senate version has also, does turn this into a felony.

5 We had two changes to suggest to you. One, where the  
6 House bill says "employee" we would suggest "bona fide employee."  
7 In the Committee on Aging's hearing in Chicago they found that  
8 one means of kicking back, where a doctor had a secretary,  
9 the laboratory would pick up the salary of a doctor's secretary,  
10 that kind of thing. That is not a bona fide employment  
11 relationship. We think that that can be clarified here.

12 There is a second suggestion that we have. There is no  
13 penalty where doctors take assignments under Medicare today  
14 where they agree under assignment to take the Medicare  
15 payment as the full payment except for co-insurance and  
16 deductibles.

17 There are a number of cases, despite the fact that they  
18 get their Medicare assignment, they continue to bill the  
19 patient for more than a reasonable charge that has been  
20 suggested, and staff recommends that that be made a misdemeanor,  
21 six months, \$2,000 where it is a repeated and willful violation  
22 of the assignment agreement.

23 Despite the fact that he agrees to accept the Medicaid  
24 payment as full payment, he continues to bill for more than  
25 that reasonable charge.

1 Senator Talmadge. Is there objection?

2 Senator Moynihan. We have made a felony of this?

3 Mr. Constantine. Yes, sir. Five years, \$25,000.

4 Senator Talmadge. Without objection, agreed.

5 Mr. Constantine. The House added quite a few PSRO amend-  
6 ments. They thought it was appropriate in many cases to utilize  
7 the PSRO. They had extensive hearings on the PSRO. They  
8 thought amendments were necessary to enhance the ability to  
9 give appropriate care under the programs and avoidance --

10 Senator Talmadge. That is in the House bill? That is  
11 under clean-up practices and abuse?

12 Mr. Constantine. That is to enhance the operation of  
13 the program. They thought that this was an appropriate  
14 vehicle in both Interstate and Foreign Commerce and Ways and  
15 Means to deal with those problems. Many of these changes  
16 were approved by the Senate previously; some were not.

17 If we could run through those pretty quickly --

18 Senator Talmadge. With no objection, we can agree to them  
19 en bloc.

20 Mr. Constantine. If we could indicate where the changes  
21 could be, Mr. Chairman.

22 The Chairman. Could I just make this suggestion, because  
23 the clock is going to run out on us.

24 I would suggest that the staff simply underline the  
25 areas, mark the express areas where these changes have

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1 occurred and have been suggested, and let us look this thing  
2 over between now and tomorrow. We have a meeting scheduled  
3 for tomorrow. Then if anyone wants to object to any of those  
4 changes, we can discuss it then.

5 Otherwise, we could just agree to it. I am familiar with  
6 most of what this is, I believe. I think most of us are the  
7 same way, and we can save ourselves some time by just submitting  
8 ourselves to the items the Senators want to raise questions  
9 about.

10 Mr. Constantine. I think you will find, Mr. Chairman,  
11 with respect to the bulk of the provisions, most of the  
12 provisions we are recommending, just taking the House language,  
13 it is a little unusual -- they really have done a fine job in  
14 the area and have improved a great deal.

15 The Chairman. To simply recommend what we recommended  
16 before is easy enough, but where we are recommending  
17 something different than that, why do you just not take it and  
18 mark it in such a way, and the staff can help you mark it for  
19 the numbers, so we can look that over tonight and come back  
20 here overnight and come back here and vote on it.

21 I am afraid the clock is going to run out on us.

22 There is a vote on the Floor. That being the case,  
23 perhaps if we could set this thing on for tomorrow.

24 I have one specific point I want to raise; I think I  
25 want to raise it tomorrow rather than today and someone else



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1 may want to raise some points.

2 I do not think we would have much objection to this  
3 measure. In the main, it is something that we have done  
4 before, and we can streamline our action if we just mark the  
5 special things.

6 Mr. Constantine. We would pick it up in Section 5 of  
7 the bill, marking any changes, suggested changes.

8 Senator Talmadge. What time will we meet tomorrow,  
9 Mr. Chairman?

10 Mr. Stern. You are scheduled at 10:00. Do you want to  
11 meet a little earlier, Mr. Chairman.

12 Senator Talmadge. It would suit me fine. I am in  
13 conference with the House on a mammoth bill. I left the  
14 conference to come here.

15 Anytime you want to meet.

16 The Chairman. 9:30.

17 Senator Talmadge. 9:30 is fine.

18 Are you still planning hearings next week?

19 The Chairman. At the moment, I am.

20 Do you have your witnesses lined up?

21 Mr. Stern. We have witnesses lined up for all five days.

22 We confirmed it Monday through Wednesday; we are going to send  
23 out telegrams for Thursday and Friday today.

24 The Chairman. All right.

25 (Thereupon, at 12:10 a.m. the Committee recessed to recon-  
vene Thursday, August 4, 1977 at 9:00 a.m.)