100TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
100-495

OMNIBUS BUDGET RECONCILIATION ACT OF 1987

CONFERENCE REPORT

TO ACCOMPANY

H.R. 3545

DECEMBER 21, 1987.—Ordered to be printed

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Mr. GRAY of Pennsylvania, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3545]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3545) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1987".

SEC. 2. TABLE OF CONTENTS.

TITLE I—AGRICULTURE AND RELATED PROGRAMS

SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1987".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TABLE OF CONTENTS

Subtitle A—Adjustments to Agricultural Commodity Programs

SEC. 1101. TARGET PRICE REDUCTIONS.

(a) WHEAT.—Effective only for the 1988 and 1989 crops of wheat, section 107D(c)(1)(G) of the Agricultural Act of 1949 (7 U.S.C. 1445b–3(c)(1)(G)) is amended by striking out "$4.29 per bushel for the 1988 crop, $4.16 per bushel for the 1989 crop" and inserting in lieu thereof "$4.23 per bushel for the 1988 crop, $4.10 per bushel for the 1989 crop".

(b) FEED GRAINS.—Effective only for the 1988 and 1989 crops of feed grains, section 105C(c)(1)(E) of such Act (7 U.S.C. 1444e(c)(1)(E)) is amended by striking out "$2.97 per bushel for the 1988 crop, $2.88 per bushel for the 1989 crop" and inserting in lieu thereof "$2.93 per bushel for the 1988 crop, $2.84 per bushel for the 1989 crop".

(c) COTTON.—Effective only for the 1988 and 1989 crops of upland cotton, section 103A(c)(1)(D) of such Act (7 U.S.C. 1444–1(c)(1)(D)) is amended by striking out "$0.77 per pound for the 1988 crop, $0.745 per pound for the 1989 crop" and inserting in lieu thereof "$0.759 per pound for the 1988 crop, $0.734 per pound for the 1989 crop".

(d) EXTRA LONG STAPLE COTTON.—Effective only for the 1988 and 1989 crops of extra long staple cotton, section 103(h)(3)(B) of such Act (7 U.S.C. 1444(h)(3)(B)) is amended—

(1) by striking out "The" and inserting in lieu thereof "Except as provided in clause (ii), the"; and

(2) by adding at the end thereof the following new clause:

"(ii) In the case of each of the 1988 and 1989 crops of extra long staple cotton, the established price for each such crop shall be 118.3 percent of the loan level determined for such crop under paragraph (2).".

(e) RICE.—Effective only for the 1988 and 1989 crops of rice, section 101A(c)(1)(D) of such Act (7 U.S.C. 1441–1(c)(1)(D)) is amended by striking out "$11.30 per hundredweight for the 1988 crop, $10.95 per hundredweight for the 1989 crop" and inserting in lieu thereof "$11.15 per hundredweight for the 1988 crop, $10.80 per hundredweight for the 1989 crop".

SEC. 1102. LOAN RATES.

(a) WHEAT.—Effective only for the 1988 through 1990 crops of wheat, section 107D(a)(3)(B) of the Agricultural Act of 1949 (7 U.S.C. 1445b–3(a)(3)(B)) is amended by striking out "not be reduced by more than 5 percent from the level determined for the preceding crop." and inserting in lieu thereof the following: "not be reduced by more than—

"(i) in the case of the 1987 crop, 5 percent from the level determined for the preceding crop;

"(ii) in the case of the 1988 crop, 3 percent from the level determined for the preceding crop;

"(iii) in the case of the 1989 crop, 5 percent from the level determined for the preceding crop, plus an additional 2 percent from the level determined for the preceding crop if the Secretary, after taking into account any reduction that is provided for under paragraph (4)(A)(ii), determines that such additional percentage reduction is necessary to maintain a competitive market position for wheat; and

"(iv) in the case of the 1990 crop, 5 percent from the level determined for the preceding crop.".

(b) FEED GRAINS.—Effective only for the 1988 through 1990 crops of feed grains, section 105C(a)(2)(B) of such Act (7 U.S.C. 1444e(a)(2)(B)) is amended by striking out "not be reduced by more than 5 percent from the level determined for the preceding crop." and inserting in lieu thereof the following: "not be reduced by more than—

"(i) in the case of the 1987 crop, 5 percent from the level determined for the preceding crop;

"(ii) in the case of the 1988 crop, 3 percent from the level determined for the preceding crop;

"(iii) in the case of the 1989 crop, 5 percent from the level determined for the preceding crop, plus an additional 2 percent from the level determined for the preceding crop if the Secretary, after taking into account any reduction that is provided for under paragraph (3)(A)(ii), determines that such additional percentage reduction is necessary to maintain a competitive market position for feed grains; and

"(iv) in the case of the 1990 crop, 5 percent from the level determined for the preceding crop.".

(c) COTTON.—Effective only for the 1988 through 1990 crops of upland cotton, subparagraph (A) of section 103A(a)(2) of such Act (7 U.S.C. 1444-1(a)(2)(A)) is amended to read as follows:

"(A) The loan level for any crop determined under paragraph (1)(B) may not be reduced below 50 cents per pound nor more than—

"(i) in the case of the 1987 crop, 5 percent from the level determined for the preceding crop;

"(ii) in the case of the 1988 crop, 3 percent from the level determined for the preceding crop;

"(iii) in the case of the 1989 crop, 5 percent from the level determined for the preceding crop, plus an additional 2 percent from the level determined for the preceding crop if the Secretary determines that such additional percentage reduction is necessary to maintain a competitive market position for upland cotton; and

"(iv) in the case of the 1990 crop, 5 percent from the level determined for the preceding crop.".

(d) RICE.—Effective only for the 1988 through 1990 crops of rice, paragraph (2) of section 101A(a) of such Act (7 U.S.C. 1441-1(a)(2)) is amended to read as follows:

"(2) The loan level for any crop determined under paragraph (1)(B) may not be reduced by more than—

"(A) in the case of the 1987 crop, 5 percent from the level determined for the preceding crop;

"(B) in the case of the 1988 crop, 3 percent from the level determined for the preceding crop;

"(C) in the case of the 1989 crop, 5 percent from the level determined for the preceding crop, plus an additional 2 percent from the level determined for the preceding crop if the Secretary determines that such additional percentage reduction is necessary to maintain a competitive market position for rice; and

"(D) in the case of the 1990 crop, 5 percent from the level determined for the preceding crop.".

SEC. 1103. FEED GRAIN DIVERSION PROGRAM.

Effective only for the 1988 and 1989 crops of feed grains, section 105C(f)(5) of the Agricultural Act of 1949 (7 U.S.C. 1444e(f)(5)) is amended by adding at the end thereof the following new subparagraph:

"(D)(i) In the case of the 1988 and 1989 crops of corn, grain sorghums, and barley, except as provided in clause (ii), the Secretary shall make land diversion payments to producers of corn, grain sorghums, and barley, in accordance with this paragraph, under which the required reduction in the crop acreage base shall be 10 percent and the diversion payment rate shall be $1.75 per bushel for corn. The Secretary shall establish the diversion payment rate for grain sorghums and barley at such level as the Secretary determines is fair and reasonable in relation to the rate established for corn.

"(ii) In the case of the 1989 crop of corn, grain sorghums, or barley, the Secretary may waive the application of clause (i) if the Secretary determines that it is necessary to maintain an adequate supply of corn, grain sorghums, or barley.".

SEC. 1104. PRICE SUPPORT REDUCTION FOR NONTARGET PRICE COMMODITIES.

(a) TOBACCO.—Effective only for the 1988 and 1989 crops of tobacco, section 106(f) of the Agricultural Act of 1949 (7 U.S.C. 1445(f)) is amended by adding at the end thereof the following new paragraph:

"(8)(A) Notwithstanding any other provision of this subsection, in the case of each of the 1988 and 1989 crops of any kind of tobacco, the Secretary shall reduce the support level for such crop by an amount equal to 1.4 percent of the level otherwise established under this subsection. Any such reduction shall not be taken into consideration in determining the support level for a subsequent crop of tobacco.

"(B) In lieu of making any such reduction, the Secretary may impose assessments on the producers and purchasers in an amount sufficient to realize a reduction in outlays equal to the amount that would have been achieved as a result of the reduction required under subparagraph (A). Such assessments shall not apply to purchasers if it is judicially determined that the imposition of the purchaser assessment will adversely affect the contracts entered into under section 1109 of the Consolidated Omnibus Budget Reconciliation Act of 1986 (7 U.S.C. 1445-3).".

(b) PEANUTS.—Effective only for the 1988 and 1989 crops of peanuts, section 108B of such Act (7 U.S.C. 1445c-2) is amended by adding at the end thereof the following new paragraph:

"(6) Notwithstanding any other provision of this section, in the case of each of the 1988 and 1989 crops of peanuts, the Secretary shall reduce outlays under the program provided for under this subsection by an amount equal to 1.4 percent of the

amount of outlays that would otherwise be incurred in the absence of the reduction required by this paragraph."

(c) HONEY.—Effective only for the 1987 through 1990 crops of honey, section 201(b)(1) of such Act (7 U.S.C. 1446(b)(1)) is amended by adding at the end thereof the following new subparagraph:

"(D) Notwithstanding the foregoing provisions of this paragraph, effective for each of the 1987 through 1990 crops, the loan and purchase level for honey that would otherwise apply under subparagraphs (B) and (C), without regard to this subparagraph, shall be reduced for loans and purchases made after the date of the enactment of this subparagraph by 2 cents per pound for the 1987 crop, ¾ cents per pound for the 1988 crop, ½ cent per pound for the 1989 crop, and ¼ cent per pound for the 1990 crop.".

(d) MILK.—Section 201(d)(2) of such Act (7 U.S.C. 1446(d)) is amended—

(1) in subparagraph (C), by striking out "subparagraph (A)" and inserting in lieu thereof "this paragraph"; and

(2) by adding at the end thereof the following new subparagraph:

"(F) During calendar year 1988, the Secretary shall provide for a reduction of 2½ cents per hundredweight to be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use.".

(e) SUGAR.—Section 201(j) of such Act (7 U.S.C. 1446(j)) is amended by adding at the end thereof the following new paragraph:

"(7) Notwithstanding any other provision of this section, in the case of each of the 1988 and 1989 crops of sugar beets and sugarcane, the Secretary shall reduce outlays under the program provided for under this subsection by an amount equal to 1.4 percent of the amount of outlays that would otherwise be incurred in the absence of the reduction required by this paragraph."

(f) WOOL AND MOHAIR.—Section 703(b) of the National Wool Act of 1954 (7 U.S.C. 1782) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraphs (2) and (3), the";

(2) by striking out ": Provided," and all that follows through the period and inserting in lieu thereof a period; and

(3) by adding at the end thereof the following new paragraphs:

"(2) Except as provided in paragraph (3), for the marketing years beginning January 1, 1982, and ending December 31, 1990, the support price for shorn wool shall be 77.5 percent (rounded to the nearest full cent) of the amount calculated according to paragraph (1).

"(3) For the marketing years beginning January 1, 1988, and ending December 31, 1989, the support price for shorn wool shall be 76.4 percent (rounded to the nearest full cent) of the amount calculated according to paragraph (1).".

SEC. 1105. LOAN RATE DIFFERENTIALS.

Section 403 of the Agricultural Act of 1949 (7 U.S.C. 1423) is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding provisions of this section, for each

of the 1988 through 1990 crops of wheat and feed grains, no adjustment in the loan rate applicable to a particular region, State, or county for the purpose of reflecting transportation differentials may increase or decrease such regional, State, or county loan rate from the level established for the previous year by more than the percentage change in the national average loan rate plus or minus 2 percent.".

SEC. 1106. STORAGE COST ADJUSTMENT.

For the fiscal years 1988 and 1989, the Secretary of Agriculture shall ensure that expenditures of the Commodity Credit Corporation for commercial storage, transportation, and handling of commodities owned by the Corporation (excluding storage payments made in accordance with section 110 of the Agricultural Act of 1949 (7 U.S.C. 1445e)) are reduced by $230,000,000 in such fiscal years from the amount of funds otherwise projected to be expended in fiscal years 1988 and 1989 under the budget base determined under section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901) for commercial storage, transportation, and handling of such commodities. In order to achieve the savings required by this section, the Secretary shall adjust storage, handling, or transportation expenditures paid by the Corporation or take other appropriate actions.

SEC. 1107. ACREAGE LIMITATION PROGRAM FOR OATS.

Effective only for the 1988 through 1990 crops of feed grains, section 105C(f)(2) of the Agricultural Act of 1949 (7 U.S.C. 1444e(f)(2)) is amended by adding at the end thereof the following new subparagraph:

"(G) In the case of the 1988 through 1990 crops of oats, the Secretary shall not establish a percentage reduction in accordance with paragraph (1) in excess of 5 percent. In implementing this subparagraph, the Secretary shall issue regulations that provide for the fair and equitable treatment of producers on a farm for which an oat and barley crop acreage base has been established. To ensure the efficient and fair implementation of this subparagraph, the Secretary shall announce revisions of the acreage limitation program for the 1988 crop of feed grains that implement this subparagraph as soon as practicable after the date of enactment of the Agricultural Reconciliation Act of 1987. In the case of the 1990 crop of oats, the Secretary may waive the application of this subparagraph if the Secretary determines that the supply of oats will be excessive.".

SEC. 1108. PRODUCER RESERVE PROGRAM.

Subparagraph (A) of the fourth sentence of section 110(b) of the Agricultural Act of 1949 (7 U.S.C. 1445e(b)) is amended—

(1) in clause (i), by striking out "17 percent of the estimated total domestic and export usage of wheat during the then current marketing year for wheat, as determined by the Secretary" and inserting in lieu thereof "300 million bushels"; and

(2) in clause (ii), by striking out "7 percent of the estimated total domestic and export usage of feed grains during the then current marketing year for feed grains, as determined by the Secretary" and inserting in lieu thereof "450 million bushels".

SEC. 1109. YIELD ADJUSTMENTS.

Effective only for the 1988 through 1990 crops of wheat, feed grains, upland cotton, and rice, section 506(b)(2) of the Agricultural Act of 1949 (7 U.S.C. 1466(b)(2)) is amended by adding at the end thereof the following new subparagraph:

"(C) In the case of each of the 1988 through 1990 crop years for a commodity, if the farm program payment yield for a farm is reduced more than 10 percent below the farm program payment yield for the 1985 crop year, the Secretary shall make available to producers established price payments for the commodity in such amount as the Secretary determines is necessary to provide the same total return to producers as if the farm program payment yield had not been reduced more than 10 percent below the farm program payment yield for the 1985 crop year. Such payments shall be made available to producers at the time final deficiency payments are made available.".

SEC. 1110. ADVANCE PAYMENTS.

Effective only for the 1988 through 1990 crops of wheat, feed grains, upland cotton, and rice, section 107C(a) of the Agricultural Act of 1949 (7 U.S.C. 1445b–2(a)) is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) If the Secretary establishes an acreage limitation or set-aside program for any of the 1988 through 1990 crops of wheat, feed grains, upland cotton, or rice under this Act and determines that deficiency payments will likely be made for such commodity for such crop, the Secretary shall make advance deficiency payments available to producers for each of such crops."; and

(2) in paragraph (2)(F), by striking out clause (iii) and inserting in lieu thereof the following new clause:

"(iii)(I) in the case of wheat and feed grains, not less than 40 percent, nor more than 50 percent, of the projected payment rate; and

"(II) in the case of rice and upland cotton, not less than 30 percent, nor more than 50 percent, of the projected payment rate,".

SEC. 1111. ADVANCED EMERGENCY COMPENSATION PAYMENTS FOR WHEAT.

Effective only for the 1987 through 1990 crops of wheat, section 107D(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1445b–3(c)(1)(E)) is amended by adding at the end thereof the following new clauses:

"(iii) Notwithstanding any other provision of this Act, in the case of each of the 1987 through 1990 crops of wheat, the Secretary shall—

"(I) by December 1 of each of the marketing years for such crops (or, in the case of the 1987 crop, as soon as practicable after the date of enactment of the Agricultural Reconciliation Act of 1987), estimate the national weighted average market price, per bushel of wheat, received by producers during such marketing year;

"(II) by December 15 of such marketing year (or, in the case of the 1987 crop, as soon as practicable, but not later than 75 days,

after the date of enactment of such Act), use the estimate to make available to producers who have elected the payment option authorized by this clause not less than 75 percent of the increase in established price payments estimated to be payable with respect to such crop under this subparagraph; and

"(III) adjust the amount of each final established price payment for wheat to reflect any difference between the amount of any estimated payment made under this clause and the amount of actual payment due under this subparagraph.

"(iv) Producers shall elect the payment option authorized by clause (iii)—

"(I) in the case of the 1987 crop of wheat, not later than 45 days after the date of the enactment of this clause; and

"(II) in the case of each of the 1988 through 1990 crops of wheat, at the time of entering into a contract to participate in the program established by this section for the crop.".

SEC. 1112. TOBACCO PROVISIONS.

(a) TRANSFER AUTHORITY.—Section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 316(h)) is amended by adding at the end thereof the following new subsection:

"(h)(1) Notwithstanding any other provision of this section, the Secretary may permit, after June 30 of any crop year, the lease and transfer of flue-cured tobacco quota assigned to a farm if—

"(A) the planted acreage of flue-cured tobacco on the farm to which the quota is assigned is determined by the Secretary to be equal to or greater than 90 percent of the farm's acreage allotment, or the planted acreage is determined to be sufficient to produce the farm marketing quota under average conditions; and

"(B) the farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a natural disaster condition.

"(2) Any lease and transfer of quota under this paragraph may be made to any other farm within the same State in accordance with regulations issued by the Secretary.".

(b) PERIODIC ADJUSTMENT OF YIELD FACTOR FOR FLUE-CURED TOBACCO ACREAGE-POUNDAGE QUOTAS.—Section 317(a) of such Act (7 U.S.C. 1314c(a)) is amended by striking out "and at five year intervals thereafter" each place it appears in paragraphs (2), (4), and (6)(A).

(c) IMPROVED TOBACCO FIELD MEASUREMENT.—It is the sense of Congress that the Secretary of Agriculture should review current compliance procedures for acreage or poundage quotas with respect to cigar and dark-air and fire-cured tobaccos under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) to determine means of improving such procedures. The Secretary shall recommend to Congress changes in existing law that would be necessary to implement any such improvements.

SEC. 1113. HAYING AND GRAZING.

(a) WHEAT.—Effective only for the 1988 through 1990 crops of wheat, section 107D of the Agricultural Act of 1949 (7 U.S.C. 1445b-3) is amended—

(1) in subsection (c)(1)(K)—

(A) in clause (i)—

(i) by striking out "(i)"; and

(ii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively; and

(B) by striking out clause (ii);

(2) in subsection (f)(4)—

(A) in subparagraph (B)—

(i) by striking out "Subject to subparagraph (C), the" and inserting in lieu thereof "The"; and

(ii) by striking out "hay and grazing,"; and

(B) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C)(i) Except as provided in clauses (ii) and (iii), haying and grazing of acreage designated as conservation use acreage for the purpose of meeting any requirements established under an acreage limitation program (including a program conducted under subsection (c)(1)(C)), set-aside program, or land diversion program established under this section shall be permitted, except during any consecutive 5-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-month period shall be established during the period beginning April 1, and ending October 31, of a year.

"(ii) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

"(iii) Haying and grazing shall not be permitted for any crop under clause (i) if the Secretary determines that haying and grazing would have an adverse economic effect.".

(b) FEED GRAINS.—Effective only for the 1988 through 1990 crops of feed grains, section 105C of such Act (7 U.S.C. 1445b–3) is amended—

(1) in subsection (c)(1)(I)—

(A) in clause (i)—

(i) by striking out "(i)"; and

(ii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively; and

(B) by striking out clause (ii);

(2) in subsection (f)(4)—

(A) in subparagraph (B)—

(i) by striking out "Subject to subparagraph (C), the" and inserting in lieu thereof "The"; and

(ii) by striking out "hay and grazing,"; and

(B) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C)(i) Except as provided in clauses (ii) and (iii), haying and grazing of acreage designated as conservation use acreage for the purpose of meeting any requirements established under an acreage limitation program (including a program conducted under subsection (c)(1)(B)), set-aside program, or land diversion program established under this section shall be permitted, except during any consecutive 5-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-month period

shall be established during the period beginning April 1, and ending October 31, of a year.

"(ii) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

"(iii) Haying and grazing shall not be permitted for any crop under clause (i) if the Secretary determines that haying and grazing would have an adverse economic effect.".

(c) COTTON.—Effective only for the 1988 through 1990 crops of upland cotton, section 103A of such Act (7 U.S.C. 1444-1) is amended—

(1) in subsection (c)(1)(G)—

(A) in clause (i)—

(i) by striking out "(i)"; and

(ii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively; and

(B) by striking out clause (ii);

(2) in subsection (f)(3)—

(A) in subparagraph (B)—

(i) by striking out "Subject to subparagraph (C), the" and inserting in lieu thereof "The"; and

(ii) by striking out "hay and grazing,"; and

(B) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C)(i) Except as provided in clauses (ii) and (iii), haying and grazing of acreage designated as conservation use acreage for the purpose of meeting any requirements established under an acreage limitation program (including a program conducted under subsection (c)(1)(C)), set-aside program, or land diversion program established under this section shall be permitted, except during any consecutive 5-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-month period shall be established during the period beginning April 1, and ending October 31, of a year.

"(ii) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

"(iii) Haying and grazing shall not be permitted for any crop under clause (i) if the Secretary determines that haying and grazing would have an adverse economic effect.".

(d) RICE.—Effective only for the 1988 through 1990 crops of rice, section 101A of such Act (7 U.S.C. 1441-1) is amended—

(1) in subsection (c)(1)(G)—

(A) in clause (i)—

(i) by striking out "(i)"; and

(ii) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively; and

(B) by striking out clause (ii);

(2) in subsection (f)(3)—

(A) in subparagraph (B)—

(i) by striking out "Subject to subparagraph (C), the" and inserting in lieu thereof "The"; and

(ii) by striking out "hay and grazing,"; and

(B) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C)(i) Except as provided in clauses (ii) and (iii), haying and grazing of acreage designated as conservation use acreage for the purpose of meeting any requirements established under an acreage limitation program (including a program conducted under subsection (c)(1)(B)), set-aside program, or land diversion program established under this section shall be permitted, except during any consecutive 5-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. Such 5-month period shall be established during the period beginning April 1, and ending October 31, of a year.

"(ii) In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

"(iii) Haying and grazing shall not be permitted for any crop under clause (i) if the Secretary determines that haying and grazing would have an adverse economic effect.".

Subtitle B—Optional Acreage Diversion

SEC. 1201. WHEAT OPTIONAL ACREAGE DIVERSION PROGRAM.

Effective only for the 1988 through 1990 crops of wheat, section 107D(c)(1)(C) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(C)) is amended—

(1) in clause (i)(II), by striking out ", subject to the compliance of the producers with clause (ii)";

(2) by striking out clauses (ii) and (iii) and inserting in lieu thereof the following new clauses:

"(ii) Notwithstanding any other provision of this section, any producer who elects to devote all or a portion of the permitted wheat acreage of the farm to conservation uses (or other uses as provided in subparagraph (K)) under this subparagraph shall receive deficiency payments on the acreage that is considered to be planted to wheat and eligible for payments under this subparagraph for such crop at a per-bushel rate established by the Secretary, except that such rate may not be established at less than the projected deficiency payment rate for the crop, as determined by the Secretary. Such projected payment rate for the crop shall be announced by the Secretary prior to the period during which wheat producers may agree to participate in the program for such crop.

"(iii) The Secretary shall implement this subparagraph in such a manner as to minimize the adverse effect on agribusiness and other agriculturally related economic interests within any county, State, or region. In carrying out this subparagraph, the Secretary is authorized to restrict the total amount of wheat acreage that may be taken out of production under this subparagraph, taking into consideration the total amount of wheat acreage that has or will be removed from production under other price support, production adjustment, or conservation program activities. No restrictions on the amount of acreage that may be taken out of production in accordance with this subparagraph in a crop year shall be imposed in the case of a county in which producers were eligible to receive disaster emergency loans under section 321 of the Consolidated Farm and

Rural Development Act (7 U.S.C. 1961) as a result of a disaster that occurred during such crop year."; and

(3) in clause (iv)—

(A) by inserting "(or all)" after "such portion"; and

(B) by inserting "under this subparagraph" after "subparagraph (K))".

SEC. 1202. FEED GRAINS OPTIONAL ACREAGE DIVERSION PROGRAM.

Effective only for the 1988 through 1990 crops of feed grains, section 105C(c)(1)(B) of the Agricultural Act of 1949 (7 U.S.C. 1444e(c)(1)(B)) is amended—

(1) in clause (i)(II), by striking out ", subject to the compliance of the producers with clause (ii)";

(2) by striking out clauses (ii) and (iii) and inserting in lieu thereof the following new clauses:

"(ii) Notwithstanding any other provision of this section, any producer who elects to devote all or a portion of the permitted feed grain acreage of the farm to conservation uses (or other uses as provided in subparagraph (I)) under this subparagraph shall receive deficiency payments on the acreage that is considered to be planted to feed grains and eligible for payments under this subparagraph for such crop at a per-bushel rate established by the Secretary, except that such rate may not be established at less than the projected deficiency payment rate for the crop, as determined by the Secretary. Such projected payment rate for the crop shall be announced by the Secretary prior to the period during which feed grain producers may agree to participate in the program for such crop.

"(iii) The Secretary shall implement this subparagraph in such a manner as to minimize the adverse effect on agribusiness and other agriculturally related economic interests within any county, State, or region. In carrying out this subparagraph, the Secretary is authorized to restrict the total amount of feed grain acreage that may be taken out of production under this subparagraph, taking into consideration the total amount of feed grain acreage that has or will be removed from production under other price support, production adjustment, or conservation program activities. No restrictions on the amount of acreage that may be taken out of production in accordance with this subparagraph in a crop year shall be imposed in the case of a county in which producers were eligible to receive disaster emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as a result of a disaster that occurred during such crop year."; and

(3) in clause (iv)—

(A) by inserting "(or all)" after "such portion"; and

(B) by inserting "under this subparagraph" after "subparagraph (I))".

SEC. 1203. REGULATIONS.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Agriculture shall issue regulations implementing the amendments made to sections 107D(c)(1)(C) and 105C(c)(1)(B) of the Agricultural Act of 1949 (7 U.S.C. 1445b–3(c)(1)(C) and 1444e(c)(1)(B)) by sections 1201 and 1202, respectively.

(b) NONREDUCTION OF BASES AND YIELDS.—Such regulations shall include provisions that ensure that the wheat or feed grain crop

acreage base and farm program payment yield for any farm will not be reduced if the producers on the farm set aside from production all, or a portion, of the producer's permitted acreage under the acreage diversion program under section 107D(c)(1)(C) or 105C(c)(1)(B) as amended by section 1201 or 1202, respectively.

(c) EFFECT ON LANDLORD-TENANT RELATIONS.—Such regulations shall ensure, to the maximum extent practicable, that the programs authorized under this subtitle will not adversely affect the relationships between landlords and tenants, regarding any crop acreage base entered into such programs, in existence on the date of enactment of this Act.

Subtitle C—Farm Program Payments

SEC. 1301. PREVENTION OF THE CREATION OF ENTITIES TO QUALIFY AS SEPARATE PERSONS.

(a) IN GENERAL.—Effective beginning with the 1989 crops, the Food Security Act of 1985 is amended—

(1) in section 1001(1) (7 U.S.C. 1308), by striking out "For each" and inserting in lieu thereof "Subject to sections 1001A through 1001C, for each";

(2) in section 1001(2)—

(A) in subparagraph (A), by striking out "For each" and inserting in lieu thereof "Subject to sections 1001A through 1001C, for each"; and

(B) in subparagraph (C), by striking out "The total" and inserting in lieu thereof "Subject to sections 1001A through 1001C, the total"; and

(3) by inserting after section 1001 the following new section:

"SEC. 1001A. PREVENTION OF CREATION OF ENTITIES TO QUALIFY AS SEPARATE PERSONS; PAYMENTS LIMITED TO ACTIVE FARMERS.

"(a) PREVENTION OF CREATION OF ENTITIES TO QUALIFY AS SEPARATE PERSONS.—For the purposes of preventing the use of multiple legal entities to avoid the effective application of the payment limitations under section 1001:

"(1) IN GENERAL.—A person (as defined in section 1001(5)(B)(i)) that receives farm program payments (as described in paragraphs (1) and (2) of this section as being subject to limitation) for a crop year under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) may not also hold, directly or indirectly, substantial beneficial interests in more than two entities (as defined in section 1001(5)(B)(i)(II)) engaged in farm operations that also receive such payments as separate persons, for the purposes of the application of the limitations under section 1001. A person that does not receive such payments for a crop year may not hold, directly or indirectly, substantial beneficial interests in more than three entities that receive such payments as separate persons, for the purposes of the application of the limitations under section 1001.

"(2) MINIMAL BENEFICIAL INTERESTS.—For the purpose of this subsection, a beneficial interest in any entity that is less than 10 percent of all beneficial interests in such entity combined shall not be considered a substantial beneficial interest, unless

the Secretary determines, on a case-by-case basis, that a smaller percentage should apply to one or more beneficial interests to ensure that the purpose of this subsection is achieved.

"(3) NOTIFICATION BY ENTITIES.—To facilitate administration of this subsection, each entity receiving such payments as a separate person shall notify each individual or other entity that acquires or holds a substantial beneficial interest in it of the requirements and limitations under this subsection. Each such entity receiving payments shall provide to the Secretary of Agriculture, at such times and in such manner as prescribed by the Secretary, the name and social security number of each individual, or the name and taxpayer identification number of each entity, that holds or acquires a substantial beneficial interest.

"(4) NOTIFICATION OF INTEREST.—

"(A) IN GENERAL.—If a person is notified that the person holds substantial beneficial interests in more than the number of entities receiving payments that is permitted under this subsection for the purposes of the application of the limitations under section 1001, the person immediately shall notify the Secretary, designating those entities that should be considered as permitted entities for the person for purposes of applying the limitations. Each remaining entity in which the person holds a substantial beneficial interest shall be subject to reductions in the payments to the entity subject to limitation under section 1001 in accordance with this subparagraph. Each such payment applicable to the entity shall be reduced by an amount that bears the same relation to the full payment that the person's beneficial interest in the entity bears to all beneficial interests in the entity combined. Before making such reductions, the Secretary shall notify all individuals or entities affected thereby and permit them to adjust among themselves their interests in the designated entity or entities.

"(B) NOTICE NOT PROVIDED.—If the person does not so notify the Secretary, all entities in which the person holds substantial beneficial interests shall be subject to reductions in the per person limitations under section 1001 in the manner described in subparagraph (A). Before making such reductions, the Secretary shall notify all individuals or entities affected thereby and permit them to adjust among themselves their interests in the designated entity or entities.".

SEC. 1302. PAYMENTS LIMITED TO ACTIVE FARMERS.

Effective beginning with the 1989 crops, section 1001A of the Food Security Act of 1985, as added by section 1301, is amended by adding at the end the following:

"(b) PAYMENTS LIMITED TO ACTIVE FARMERS.—

"(1) IN GENERAL.—To be separately eligible for farm program payments (as described in paragraphs (1) and (2) of section 1001 as being subject to limitation) under the Agricultural Act of 1949 with respect to a particular farming operation (whether in the person's own right or as a partner in a general partnership, a grantor of a revocable trust, a participant in a joint venture,

or a participant in a similar entity (as determined by the Secretary) that is the producer of the crops involved), a person must be an individual or entity described in section 1001(5)(B)(i) and actively engaged in farming with respect to such operation, as provided under paragraphs (2), (3), and (4).

"(2) GENERAL CLASSES ACTIVELY ENGAGED IN FARMING.—For the purposes of paragraph (1), except as otherwise provided in paragraph (3):

"(A) INDIVIDUALS.—An individual shall be considered to be actively engaged in farming with respect to a farm operation if—

"(i) the individual makes a significant contribution (based on the total value of the farming operation) of—

"(I) capital, equipment, or land; and

"(II) personal labor or active personal management;

to the farming operation; and

"(ii) the individual's share of the profits or losses from the farming operation is commensurate with the individual's contributions to the operation; and

"(iii) the individual's contributions are at risk.

"(B) CORPORATIONS OR OTHER ENTITIES.—A corporation or other entity described in section 1001(5)(B)(i)(II) shall be considered as actively engaged in farming with respect to a farming operation if—

"(i) the entity separately makes a significant contribution (based on the total value of the farming operation) of capital, equipment, or land;

"(ii) the stockholders or members collectively make a significant contribution of personal labor or active personal management to the operation; and

"(iii) the standards provided in clauses (ii) and (iii) of paragraph (A), as applied to the entity, are met by the entity.

"(C) ENTITIES MAKING SIGNIFICANT CONTRIBUTIONS.—If a general partnership, joint venture, or similar entity (as determined by the Secretary) separately makes a significant contribution (based on the total value of the farming operation involved) of capital, equipment, or land, and the standards provided in clauses (ii) and (iii) of paragraph (A), as applied to the entity, are met by the entity, the partners or members making a significant contribution of personal labor or active personal management shall be considered to be actively engaged in farming with respect to the farming operation involved.

"(D) EQUIPMENT AND PERSONAL LABOR.—In making determinations under this subsection regarding equipment and personal labor, the Secretary shall take into consideration the equipment and personal labor normally and customarily provided by farm operators in the area involved to produce program crops.

"(3) SPECIAL CLASSES ACTIVELY ENGAGED IN FARMING.—Notwithstanding paragraph (2), the following persons shall be con-

sidered to be actively engaged in farming with respect to a farm operation:

"(A) LANDOWNERS.—A person that is a landowner contributing the owned land to the farming operation if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results, and the person meets the standard provided in clauses (ii) and (iii) of paragraph (2)(A).

"(B) FAMILY MEMBERS.—With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution (based on the total value of the farming operation) of active personal management or personal labor and, with respect to such contribution, who meets the standards provided in clauses (ii) and (iii) of paragraph (2)(A). For the purposes of the preceding sentence, the term 'family member' means an individual to whom another family member in the farming operation is related as lineal ancestor, lineal descendant, or sibling (including the spouses of those family members who do not make a significant contribution themselves).

"(C) SHARECROPPERS.—A sharecropper who makes a significant contribution of personal labor to the farming operation and, with respect to such contribution, who meets the standards provided in clauses (ii) and (iii) of paragraph (2)(A).

"(4) PERSONS NOT ACTIVELY ENGAGED IN FARMING.—For the purposes of paragraph (1), except as provided in paragraph (3), the following persons shall not be considered to be actively engaged in farming with respect to a farm operation:

"(A) LANDLORDS.—A landlord contributing land to the farming operation if the landlord receives cash rent, or a crop share guaranteed as to the amount of the commodity to be paid in rent, for such use of the land.

"(B) OTHER PERSONS.—Any other person, or class of persons, determined by the Secretary as failing to meet the standards set out in paragraphs (2) and (3).

"(5) CUSTOM FARMING SERVICES.—A person receiving custom farming services will be considered separately eligible for payment limitation purposes if such person is actively engaged in farming based on paragraphs (1) through (3). No other rules with respect to custom farming shall apply.".

SEC. 1303. DEFINITION OF PERSON: ELIGIBLE INDIVIDUALS AND ENTITIES; RESTRICTIONS APPLICABLE TO CASH-RENT TENANTS.

Effective beginning with the 1989 crops:

(a) IN GENERAL.—Section 1001(5) of the Food Security Act of 1985 (7 U.S.C. 1308(5)) is amended—

(1) by inserting after the first sentence of subparagraph (A) the following new sentence: "Such regulations shall incorporate the provisions in subparagraphs (B) through (E) of this paragraph, paragraphs (6) and (7), and sections 1001A through 1001C.";

(2) by striking out the second sentence of subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(B)(i) For the purposes of the regulations issued under subparagraph (A), subject to clause (ii), the term 'person' means—

"(I) an individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary);

"(II) a corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary), including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity (as determined by the Secretary); and

"(III) a State, political subdivision, or agency thereof.

"(ii)(I) Such regulations shall provide that the term 'person' does not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.

"(II) In defining the term 'person' as it will apply to irrevocable trusts and estates, the Secretary shall ensure that fair and equitable treatment is given to trusts and estates and the beneficiaries thereof.

"(iii) Such regulations shall provide that, with respect to any married couple, the husband and wife shall be considered to be one person, except that any married couple consisting of spouses who, prior to their marriage, were separately engaged in unrelated farming operations, each spouse shall be treated as a separate person with respect to the farming operation brought into the marriage by such spouse so long as such operation remains as a separate farming operation, for the purposes of the application of the limitations under this section.";

(3) by redesignating subparagraph (B) as subparagraph (C); and

(4) by adding at the end thereof the following new subparagraphs:

"(D) Any person that conducts a farming operation to produce a crop subject to limitations under this section as a tenant that rents the land for cash (or a crop share guaranteed as to the amount of the commodity to be paid in rent) and that makes a significant contribution of active personal management but not of personal labor shall be considered the same person as the landlord unless the tenant makes a significant contribution of equipment used in the farming operation.

"(E) The Secretary may not approve (for purposes of the application of the limitations under this section) any change in a farming operation that otherwise will increase the number of persons to which the limitations under this section are applied unless the Secretary determines that the change is bona fide and substantive. In the implementation of the preceding sentence, the addition of a family member to a farming operation under the criteria set out in section 1001A(b)(1)(B) shall be considered a bona fide and substantive change in the farming operation.".

(b) LANDS OWNED BY STATES, POLITICAL SUBDIVISIONS, AND PUBLIC SCHOOLS.—Paragraph (6) of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308(6)) is amended to read as follows:

"(6) The provisions of this section that limit payments to any person shall not be applicable to land owned by a public school district or land owned by a State that is used to maintain a public school.".

SEC. 1304. MORE EFFECTIVE AND UNIFORM APPLICATION OF PAYMENT LIMITATIONS.

(a) EDUCATION PROGRAM.

(1) IN GENERAL.—The Secretary of Agriculture shall implement a payment provisions education program for appropriate personnel of the Department of Agriculture and members and other personnel of local, county, and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), for the purpose of fostering more effective and uniform application of the payment limitations and restrictions under sections 1001 through 1001C of the Food Security Act of 1985.

(2) TRAINING.—The education program shall provide training to such personnel in the fair, accurate, and uniform application to individual farming operations of the provisions of law and regulation relating to the payment provisions of sections 1001 through 1001C of the Food Security Act of 1985. Particular emphasis shall be given to the changes in the law made by sections 1301, 1302, and 1303 of this Act.

(3) IMPLEMENTATION.—The education program shall be fully implemented, and the training completed, not later than 30 days after the date final regulations are issued to carry out the amendments made by this subtitle.

(4) COMMODITY CREDIT CORPORATION.—The Secretary shall carry out the program provided under this subsection through the Commodity Credit Corporation.

(b) SCHEMES OR DEVICES.—Effective beginning with the 1989 crops, the Food Security Act of 1985 is amended by inserting after section 1001A, as added by sections 1301 and 1302 of this Act, the following new section:

"SEC. 1001B. SCHEMES OR DEVICES.

"If the Secretary of Agriculture determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, section 1001, 1001A, or 1001C, such person shall be ineligible to receive farm program payments (as described in paragraphs (1) and (2) of section 1001 as being subject to limitation) applicable to the crop year for which such scheme or device was adopted and the succeeding crop year.".

SEC. 1305. REGULATIONS; TRANSITION RULES; EQUITABLE ADJUSTMENTS.

(a) REGULATIONS.—

(1) ISSUANCE.—The Secretary of Agriculture shall issue—

(A) proposed regulations to carry out the amendments made by this subtitle not later than April 1, 1988; and

(B) final regulations to carry out such amendments not later than August 1, 1988.

(2) FIELD INSTRUCTIONS.—Any field instructions relating to, or other supplemental clarifications of, the regulations issued under sections 1001 through 1001C of the Food Security Act of 1985 shall not be used in resolving issues involved in the application of the payment limitations or restrictions under such sections or regulations to individuals, other entities, or farming operations until copies of the publication are made available to the public.

(b) ALLOWANCE FOR EQUITABLE REORGANIZATIONS.—To allow for the equitable reorganization of farming operations to conform to the limitations and restrictions contained in the amendments made to the Food Security Act of 1985 by this subtitle in cases in which the application of such limitations and restrictions will reduce payments to the farming operation (as determined by the Secretary), the Secretary may waive the application of the substantive change rule under section 1001(5)(E), as added by section 1303 of this Act, or any regulation of the Secretary containing a comparable rule, to any reorganization applied for prior to the final date when producers are eligible to enter into contracts to participate in the commodity programs established for the 1989 crop year, to the extent the Secretary determines appropriate to facilitate any such equitable reorganizations that does not increase such payments.

(c) GOOD FAITH RELIANCE ON OFFICIAL ADVICE.—Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended by adding at the end thereof the following new paragraph:

"(7) Regulations of the Secretary shall establish time limits for the various steps involved with notice, hearing, decision, and the appeals procedure in order to ensure expeditious handling and settlement of payment limitation disputes. Notwithstanding any other provision of law, actions taken by an individual or other entity in good faith on action or advice of an authorized representative of the Secretary may be accepted as meeting the requirement under this section or section 1001A, to the extent the Secretary deems it desirable in order to provide fair and equitable treatment.".

(d) CONSERVATION RESERVE APPLICATION.—Notwithstanding section 1234(f)(2) of the Food Security Act of 1985 (16 U.S.C. 3834(f)), paragraphs (5) through (7) of section 1001, as amended by this subtitle, and sections 1001A through 1001C, of the Food Security Act of 1985 shall apply to the conservation reserve program under subtitle D of title XII of such Act (16 U.S.C. 3831 et seq.) with respect to rental payments to persons under contracts entered into after the date of the enactment of this Act, except with respect to landlords that receive cash rent, or a crop share guaranteed as to the amount of the commodity to be paid in rent, for the use of the land.

SEC. 1306. FOREIGN PERSONS MADE INELIGIBLE FOR PROGRAM BENEFITS.

Effective beginning with the 1989 crops, the Food Security Act of 1985 is amended by inserting after section 1001B, as added by section 1304 of this Act, the following new section:

"SEC. 1001C. FOREIGN PERSONS MADE INELIGIBLE FOR PROGRAM BENEFITS.

"Notwithstanding any other provision of law:

"(a) IN GENERAL.—For each of the 1989 and 1990 crops, any person who is not a citizen of the United States or an alien lawfully

admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) shall be ineligible to receive any type of production adjustment payments, price support program loans, payments, or benefits made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person, unless such person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such farm.

"(b) CORPORATIONS OR OTHER ENTITIES.—For purposes of subsection (a), a corporation or other entity shall be considered a person that is ineligible for production adjustment payments, price support program loans, payments, or benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or aliens lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act, unless such persons provide a substantial amount of personal labor in the production of crops on such farm. Notwithstanding the foregoing provisions of this subsection, with respect to an entity that is determined to be ineligible to receive such payments, loans, or other benefits, the Secretary may make payments, loans, and other benefits in an amount determined by the Secretary to be representative of the percentage interests of the entity that is owned by citizens of the United States and aliens lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act.

"(c) PROSPECTIVE APPLICATION.—No person shall become ineligible under this section for production adjustment payments, price support program loans, payments or benefits as the result of the production of a crop of an agricultural commodity planted, or commodity program or conservation reserve contract entered into, before the date of the enactment of this section.".

SEC. 1307. HONEY LOAN LIMITATION.

Section 1001(2)(C) of the Food Security Act of 1985 (7 U.S.C. 1308(2)(C)) is amended—

(1) by striking out clause (i); and

(2) in clause (ii), by striking out "(ii)".

Subtitle D—Rural Electrification Administration Programs

CHAPTER 1—PREPAYMENT OF RURAL ELECTRIFICATION LOANS

SEC. 1401. PREPAYMENT OF LOANS.

(a) ELIGIBILITY TO PREPAY.—Notwithstanding subsections (c), (d), and (e) of section 306A of the Rural Electrification Act of 1936 (7 U.S.C. 936a(c), (d), and (e)), during fiscal year 1988, a borrower of a loan made by the Federal Financing Bank and guaranteed under

section 306 of such Act (7 U.S.C. 936) may, at the option of the borrower, prepay such loan (or any loan advance thereunder) in accordance with subsections (a) and (b) of section 306A of such Act, except that any prepayment that would cause the total amount of such prepayments during fiscal year 1988 to exceed $2,000,000,000 shall be subject solely to the approval of the Secretary of the Treasury.

(b) PRIORITY FOR APPROVAL.—In determining which borrowers shall be permitted to prepay loans under subsection (a):

(1) The Administrator of the Rural Electrification Administration shall give priority to those 8 borrowers that were determined by the Administrator, prior to the date of the enactment of this Act, to be eligible to prepay, or that prepaid, an advance under section 306A of such Act (as in effect prior to the date of the enactment of this Act), except that to retain such priority a borrower shall—

(A) notify the Administrator in writing, within 30 days after the issuance of regulations to carry out this section, of the intent of the borrower to prepay; and

(B) complete such prepayment by disbursing funds to the Federal Financing Bank to prepay loan advances within 120 days after the issuance of such regulations.

(2) In considering requests for prepayment under subsection (a) by borrowers not described in paragraph (1), the Administrator shall permit prepayment based on the order in which borrowers are prepared to disburse funds to the Federal Financing Bank to complete such prepayments. If more than 1 borrower is so prepared at the same time, and if the combined amount of such prepayments would cause the total amount of prepayments during fiscal year 1988, under this section, to exceed $2,000,000,000, the Administrator shall—

(A) base the determination on the date on which prepayment applications have been submitted; or

(B) permit partial prepayment by two or more borrowers.

(c) REGULATIONS.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Rural Electrification Administration shall issue such regulations as are necessary to carry at this section.

(d) STUDY.—Not later than January 1, 1989, the Comptroller General of the United States shall—

(1) study—

(A) all benefits provided by Federal Financing Bank lending and the procedures and conditions for the prepayment of current Federal Financing Bank loans;

(B) the benefits and costs to Federal Financing Bank borrowers of making prepayments; and

(C) alternative conditions and procedures for prepayment of all Federal Financing Bank loans to balance Federal benefits with Federal costs; and

(2) submit to Congress a report describing the results of such study, together with any appropriate recommendations.

SEC. 1402. USE OF FUNDS.

The Rural Electrification Act of 1936 is amended by inserting after section 311 (7 U.S.C. 940a) the following new section:

"SEC. 312. USE OF FUNDS.

"A borrower of an insured or guaranteed electric loan under this Act may, without restriction or prior approval of the Administrator, invest its own funds or make loans or guarantees, not in excess of 15 percent of its total utility plant.".

SEC. 1403. CUSHION OF CREDIT PAYMENTS PROGRAM.

Title III of the Rural Electrification Act of 1936 (as amended by section 1402 of this Act) is amended by adding at the end thereof the following new section:

"SEC. 313. CUSHION OF CREDIT PAYMENTS PROGRAM.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—The Administrator shall develop and promote a program to encourage borrowers to voluntarily make deposits into cushion of credit accounts established within the Rural Electrification and Telephone Revolving Fund.

"(2) INTEREST.—Amounts in each cushion of credit account shall accrue interest to the borrower at a rate of 5 percent per annum.

"(3) BALANCE.—A borrower may reduce the balance of its cushion of credit account only if the amount obtained from the reduction is used to make scheduled payments on loans made or guaranteed under this Act.

"(b) USES OF CUSHION OF CREDIT PAYMENTS.—

"(1) IN GENERAL.—

"(A) CASH BALANCE.—Cushion of credit payments shall be held in the Rural Electrification and Telephone Revolving Fund as a cash balance in the cushion of credit accounts of borrowers.

"(B) INTEREST.—All cash balance amounts (obtained from cushion of credit payments, loan payments, and other sources) held by the Fund shall bear interest to the Fund at a rate equal to the weighted average rate on outstanding certificates of beneficial ownership issued by the Fund.

"(C) CREDITS.—The amount of interest accrued on the cash balances shall be credited to the Fund as an offsetting reduction to the amount of interest paid by the Fund on its certificates of beneficial ownership.

"(2) RURAL ECONOMIC DEVELOPMENT SUBACCOUNT.—

"(A) MAINTENANCE OF ACCOUNT.—The Administrator shall maintain a subaccount within the Rural Electrification and Telephone Revolving Fund to which shall be credited, on a monthly basis, a sum determined by multiplying the outstanding cushion of credit payments made after October 1, 1987, by the difference (converted to a monthly basis) between the average weighted interest rate paid on outstanding certificates of beneficial ownership issued by the Fund and the 5 percent rate of interest provided to borrowers on cushion of credit payments.

"(B) GRANTS.—The Administrator is authorized, from the interest differential sums credited this subaccount and from any other funds made available thereto, to provide grants or zero interest loans to borrowers under this Act for the purpose of promoting rural economic development and

job creation projects, including funding for project feasibility studies, start-up costs, incubator projects, and other reasonable expenses for the purpose of fostering rural development.

"(C) REPAYMENTS.—In the case of zero interest loans, the Administrator shall establish such reasonable repayment terms as will ensure borrower participation.

"(D) PROCEEDS.—All proceeds from the repayment of such loans shall be returned to the subaccount.

"(E) NUMBER OF GRANTS.—Such loans and grants shall be made during each fiscal year to the full extent of the amounts held by the rural economic development subaccount, subject only to limitations as may be from time-to-time imposed by law.".

CHAPTER 2—RURAL TELEPHONE BANK BORROWERS

SEC. 1411. RURAL TELEPHONE BANK INTEREST RATES AND LOAN PREPAYMENTS.

(a) FINDINGS.—Congress finds that—

(1) overcharging of Rural Telephone Bank borrowers has resulted in $179,000,000 in excess profits and has imperiled borrowers by raising costs to ratepayers;

(2) borrowers will be able to seek redress under section 408(b)(3)(G) of the Rural Electrification Act of 1936, as added by subsection (c), or may leave the Rural Telephone Bank, but in no case may the Governor of the Bank issue regulations requiring any penalty from borrowers seeking to retire debt prior to maturity; and

(3) any reduction in Federal government expenditures in the operation of the Rural Telephone Bank, from borrowers' conduct resulting from the implementation of the amendments made by subsections (b) and (c), should be included in all calculations of the budget of the United States Government, authorized under of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

(b) RURAL TELEPHONE BANK LOAN PREPAYMENTS.

(1) PREPAYMENTS AUTHORIZED.—Section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)) is amended by adding at the end the following new paragraph:

"(8) A borrower with a loan from the Rural Telephone Bank may prepay such loan (or any part thereof) by paying the face amount thereof without being required to pay the prepayment penalty set forth in the note covering such loan, if such prepayment is not made later than September 30, 1988.".

(2) PREPAYMENT REGULATIONS.—The Governor of the Rural Telephone Bank shall issue regulations to carry out the amendment made by paragraph (1) within 30 days after the date of enactment of this Act. Such regulations shall implement the amendment made by paragraph (1) without the addition of any restrictions not set forth in such amendment.

(c) DETERMINATION OF INTEREST RATES ON RURAL TELEPHONE BANK LOANS.—Paragraph (3) of section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(3)) is amended—

(1) by inserting "(A)" after the paragraph designation; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) On and after the date of the enactment of this paragraph, advances made on or after such date of enactment under loan commitments made on or after October 1, 1987, shall bear interest at the rate determined under subparagraph (C), but in no event at a rate that is less than 5 percent per annum.

"(C) The rate determined under this subparagraph shall be—

"(i) for the period beginning on the date the advance is made and ending at the close of the fiscal year in which the advance is made, the average yield (on the date of the advance) on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the advance; and

"(ii) after the fiscal year in which the advance is made, the cost of money rate for such fiscal year, as determined under subparagraph (D).

"(D) Within 30 days after the end of each fiscal year, the Governor shall determine to the nearest 0.01 percent the cost of money rate for the fiscal year, by calculating the sum of the results of the following calculations:

"(i) The aggregate of all amounts received by the telephone bank during the fiscal year from the issuance of class A stock, multiplied by the rate of return payable by the telephone bank during the fiscal year, as specified in section 406(c), to holders of class A stock, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(ii) The aggregate of all amounts received by the telephone bank during the fiscal year from the issuance of class B stock, multiplied by the rate at which dividends are payable by the telephone bank during the fiscal year, as specified in section 406(d), to holders of class B stock, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(iii) The aggregate of all amounts received by the telephone bank during the fiscal year from the issuance of class C stock, multiplied by the rate at which dividends are payable by the telephone bank during the fiscal year, under section 406(e), to holders of class C stock, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(iv)(I) The sum of the results of the calculations described in subclause (II).

"(II) The amounts received by the telephone bank during the fiscal year from each issue of telephone debentures and other obligations of the telephone bank, multiplied, respectively, by the rates at which interest is payable during the fiscal year by the telephone bank to holders of each issue, each of which products is divided, respectively, by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(v)(I) The amount by which the aggregate of the amounts advanced by the telephone bank during the fiscal year exceeds the aggregate of the amounts received by the telephone bank from the issuance of class A stock, class B stock, class C stock, and telephone debentures and other obligations of the telephone bank during the fiscal year, multiplied by the historic cost of money rate as of the close of the fiscal year immediately preceding the fiscal year, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(II) For purposes of this clause, the term 'historic cost of money rate', with respect to the close of a preceding fiscal year, means the sum of the results of the following calculations: The amounts advanced by the telephone bank in each fiscal year during the period beginning with fiscal year 1974 and ending with the preceding fiscal year, multiplied, respectively, by the cost of money rate for the fiscal year (as set forth in the table in subparagraph (E)) for fiscal years 1974 through 1987, and as determined by the Governor under this subparagraph for fiscal years after fiscal year 1987), each of which products is divided, respectively, by the aggregate of the amounts advanced by the telephone bank during the period.

"(E) For purposes of subparagraph (D)(II), the cost of money rate for the fiscal years in which each advance was made shall be as set forth in the following table:

"For advances made in—	*The cost of money rate shall be—*
Fiscal year 1974	*5.01 percent*
Fiscal year 1975	*5.85 percent*
Fiscal year 1976	*5.33 percent*
Fiscal year 1977	*5.00 percent*
Fiscal year 1978	*5.87 percent*
Fiscal year 1979	*5.93 percent*
Fiscal year 1980	*8.10 percent*
Fiscal year 1981	*9.46 percent*
Fiscal year 1982	*8.39 percent*
Fiscal year 1983	*6.99 percent*
Fiscal year 1984	*6.55 percent*
Fiscal year 1985	*5.00 percent*
Fiscal year 1986	*5.00 percent*
Fiscal year 1987	*5.00 percent.*

For purposes of this subparagraph, the term 'fiscal year' means the 12-month period ending on September 30 of the designated year.

"(F)(i) Notwithstanding subparagraph (B), if a borrower holds a commitment for a loan under this section made on or after October 1, 1987, and before the date of the enactment of this paragraph, part or all of the proceeds of which have not been advanced as of such date of enactment, the borrower may, until the later of the date the next advance under the loan commitment is made or 90 days after such date of enactment, elect to have the interest rate specified in the loan commitment apply to the unadvanced portion of the loan in lieu of the rate which (but for this clause) would apply to the unadvanced portion

under this paragraph. If any borrower makes an election under this clause with respect to a loan, the Governor shall adjust the interest rate which applies to the unadvanced portion of the loan accordingly.

"(ii)(I) If the telephone bank, pursuant to section 407(b), issues telephone debentures on any date to refinance telephone debentures or other obligations of the telephone bank, the telephone bank shall, in addition to any interest rate reduction required by any other provision of this paragraph, for the period applicable to the advance, reduce the interest rate charged on each advance made under this section during the fiscal year in which the refinanced debentures or other obligations were originally issued by the amount applicable to the advance.

"(II) For purposes of subclause (I), the term 'the period applicable to the advance' means the period beginning on the issue date described in subclause (I) and ending on the earlier of the date the advance matures or is completely prepaid.

"(III) For purposes of subclause (I), the term 'the amount applicable to the advance' means an amount which fully reflects that percentage of the funds saved by the telephone bank as a result of the refinancing which is equal to the percentage representation of the advance in all advances described in subclause (I).

"(IV) Within 60 days after any issue date described in subclause (I), the Governor shall amend the loan documentation for each advance described in subclause (I), as necessary, to reflect any interest rate reduction applicable to the advance by reason of this clause, and shall notify each affected borrower of the reduction.

"(G) Within 30 days after the publication of any determination made under subparagraph (D), any affected borrower may obtain review of the determination, or any other equitable relief as may be determined appropriate, by the United States court of appeals for the judicial circuit in which the borrower does business by filing a written petition requesting the court to set aside or modify such determination. On receipt of such a petition, the clerk of the court shall transmit a copy of the petition to the Governor. On receipt of a copy of such a petition from the clerk of the court, the Governor shall file with the court the record on which the determination is based. The court shall have jurisdiction to affirm, set aside, or modify the determination.

"(H) Within 5 days after determining the cost of money rate for a fiscal year, the Governor shall—

"(i) cause the determination to be published in the Federal Register in accordance with section 552 of title 5, United States Code; and

"(ii) furnish a copy of the determination to the Comptroller General of the United States.

"(I) The Comptroller General shall review, on an expedited basis, each determination a copy of which is received from the Governor and, within 15 days after the date of such receipt, furnish Congress a report on the accuracy of the determination.

"(J) The telephone bank shall not sell or otherwise dispose of any loan made under this section, except as provided in this paragraph.".

SEC. 1412. INTEREST RATE TO BE CONSIDERED FOR PURPOSES OF ASSESSING ELIGIBILITY FOR LOANS.

Paragraph (4) of section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(4)) is amended by inserting at the end the following: "For purposes of determining the creditworthiness of a borrower for a loan under this paragraph, the Governor shall assume that the loan, if made, would bear interest at a rate equal to the average yield (on the date of the determination) on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the loan.".

SEC. 1413. ESTABLISHMENT OF RESERVE FOR LOSSES DUE TO INTEREST RATE FLUCTUATIONS.

(a) ESTABLISHMENT OF RESERVE; FUNDING.—Section 406 of the Rural Electrification Act of 1936 (7 U.S.C. 947) is amended by adding at the end the following:

"(h) There is hereby established in the telephone bank a reserve for losses due to interest rate fluctuations. Within 30 days after the date of the enactment of this subsection, the Governor of the telephone bank shall transfer to the reserve for losses due to interest rate fluctuations all amounts in the reserve for contingencies as of the date of the enactment of this subsection. Amounts in the reserve for interest rate fluctuations may be expended only to cover operating losses of the telephone bank (other than losses attributable to loan defaults) and only after taking into consideration any recommendations made by the General Accounting Office under section 1413(b) of the Rural Telephone Bank Borrowers Fairness Act of 1987.".

(b) STUDY BY GENERAL ACCOUNTING OFFICE.—Within 180 days after the date of the enactment of this Act, the General Accounting Office shall complete a study of operations of the telephone bank and report its recommendations to the Committees on Agriculture and Government Operations of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate with respect to—

(1) the appropriate level of funding for the reserve for losses due to interest rate fluctuations established in section 406(h) of the Rural Electrification Act of 1936 (7 U.S.C. 947(h)) (as added by subsection (a));

(2) the circumstances under which amounts in the reserve for losses due to interest rate fluctuations should be expended;

(3) the circumstances under which amounts should be added to the reserve for losses due to interest rate fluctuations; and

(4) the disposition of excess reserves.

In such study, the General Accounting Office shall consider the effects of such recommendations on telephone bank borrowers, the subscribers of such borrowers, and the United States Government.

(c) LIMITATION ON ESTABLISHMENT OF NEW RESERVES.—Subsection (g) of section 406 of the Rural Electrification Act of 1936 (7 U.S.C. 947(g)) is amended—

(1) by striking out "reserves for losses," and inserting in lieu thereof "the reserve for loan losses,"; and

(2) by adding at the end the following: "The telephone bank may not establish any reserve other than the reserves referred to in this subsection and in subsection (h).".

SEC. 1414. PUBLICATION OF RURAL TELEPHONE BANK POLICIES AND REGULATIONS.

Notwithstanding the exemption contained in section 553(a)(2) of title 5, United States Code, the Governor of the telephone bank shall cause to be published in the Federal Register, in accordance with section 553 of title 5, United States Code, all rules, regulations, bulletins, and other written policy standards governing the operation of the telephone bank's programs relating to public property, loans, grants, benefits, or contracts. After September 30, 1988, the telephone bank may not deny a loan or advance to, or take any other adverse action against, any applicant or borrower for any reason which is based upon a rule, regulation, bulletin, or other written policy standard which has not been published pursuant to such section.

Subtitle E—Miscellaneous

SEC. 1501. MARKETING ORDER PENALTIES.

Section 8c(14) of the Agricultural Adjustment Act of 1933 (7 U.S.C. 608c(14)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) by inserting "(A)" before "Any"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) may be assessed a civil penalty by the Secretary not exceeding $1,000 for each such violation. Each day during which such violation continues shall be deemed a separate violation, except that if the Secretary finds that a petition pursuant to paragraph (15) was filed and prosecuted by the handler in good faith and not for delay, no civil penalty may be assessed under this paragraph for such violations as occurred between the date on which the handler's petition was filed with the Secretary, and the date on which notice of the Secretary's ruling thereon was given to the handler in accordance with regulations prescribed pursuant to paragraph (15). The Secretary may issue an order assessing a civil penalty under this paragraph only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant, or has the handler's principal place of business. The validity of such order may not be reviewed in an action to collect such civil penalty.".

SEC. 1502. STUDY OF USE OF AGRICULTURAL COMMODITY FUTURES AND OPTIONS MARKETS.

The last sentence of section 1742 of the Food Security Act of 1985 (7 U.S.C. 1421 note) is amended by striking out "1988" and inserting in lieu thereof "1989".

SEC. 1503. AUTHORIZATION OF APPROPRIATIONS FOR PHILIPPINE FOOD AID INITIATIVE.

Section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)) is amended by adding at the end thereof the following new paragraph:

"(12) There is authorized to be appropriated for fiscal year 1988, in addition to any other funds authorized to be appropriated, $1,000,000 for technical assistance for the sale or barter of commodities under paragraph (7) to strengthen nonprofit private organizations and cooperatives in the Philippines.".

SEC. 1504. RURAL INDUSTRIALIZATION ASSISTANCE.

Section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)) is amended—

(1) by inserting "and private nonprofit corporations" after "public bodies"; and

(2) by striking out "to facilitate development of" and inserting in lieu thereof "to finance and facilitate development of small and emerging".

SEC. 1505. PLANT VARIETY PROTECTION FEES.

Section 31 of the Plant Variety Protection Act (7 U.S.C. 2371) is amended to read as follows:

"SEC. 31. PLANT VARIETY PROTECTION FEES.

"(a) IN GENERAL.—The Secretary shall, under such regulations as the Secretary may prescribe, charge and collect reasonable fees for services performed under this Act.

"(b) LATE PAYMENT PENALTY.—On failure to pay such fees, the Secretary shall assess a late payment penalty. Such overdue fees shall accrue interest as required by section 3717 of title 31, United States Code.

"(c) DISPOSITION OF FUNDS.—Such fees, late payment penalties, and accrued interest collected shall be credited to the account that incurs the cost and shall remain available without fiscal year limitation to pay the expenses incurred by the Secretary in carrying out this Act. Such funds collected (including late payment penalties and any interest earned) may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments.

"(d) ACTIONS FOR NONPAYMENT.—The Attorney General may bring an action for the recovery of charges that have not been paid in accordance with this Act against any person obligated for payment of such charges under this Act in any United States district court or other United States court for any territory or possession in any jurisdiction in which the person is found, resides, or transacts business. The court shall have jurisdiction to hear and decide the action.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act.".

SEC. 1506. ANNUAL APPROPRIATIONS TO REIMBURSE THE COMMODITY CREDIT CORPORATION FOR NET REALIZED LOSSES.

(a) IN GENERAL.—The first sentence of section 2 of Public Law 87-155 (15 U.S.C. 713a-11) is amended by striking out ", commencing with the fiscal year ending June 30, 1961" and inserting in lieu thereof "by means of a current, indefinite appropriation".

(b) OPERATING EXPENSES.—No funds may be appropriated for operating expenses of the Commodity Credit Corporation except as authorized under section 2 of Public Law 87-155 to reimburse the Corporation for net realized losses.

(c) EFFECTIVE DATE.—This section and the amendment made by this section shall apply beginning with fiscal year 1988.

SEC. 1507. FEDERAL CROP INSURANCE.

It is the sense of Congress that, in carrying out the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation—

(1) should not be required to assume 100 percent of all loss adjustments in the Federal crop insurance program; and

(2) should assume and perform the loss adjustment obligations of a reinsured company if the Corporation determines that such company's loss adjustment performance and practices are not carried out in accordance with the applicable reinsurance agreement.

SEC. 1508. ETHANOL USAGE.

(a) FINDINGS.—Congress finds that—

(1) the United States is dependent for a large and growing share of its energy needs on the Middle East at a time when world petroleum reserves are declining;

(2) the burning of gasoline causes pollution;

(3) ethanol can be blended with gasoline to produce a cleaner source of fuel;

(4) ethanol can be produced from grain, a renewable resource that is in considerable surplus in the United States;

(5) the conversion of grain into ethanol would reduce farm program costs and grain surpluses; and

(6) increasing the quantity of motor fuels that contain at least 10 percent ethanol from current levels to 50 percent by 1992 would create thousands of new jobs in ethanol production facilities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator of the Environmental Protection Agency should use authority provided under the Clean Air Act (42 U.S.C. 7401 et seq.) to require greater use of ethanol as motor fuel.

SEC. 1509. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

The Food Stamp Act of 1977 is amended by adding after section 20 (7 U.S.C. 2029) the following new section:

"SEC. 21. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

"(a) IN GENERAL.—Upon written application of the State of Washington (in this section referred to as the 'State') and after the ap-

proval of such application by the Secretary, the State may conduct a Family Independence Demonstration Project (in this section referred to as the 'Project') in all or in part of the State in accordance with this section to determine whether the Project, as an alternative to providing benefits under the food stamp program, would more effectively break the cycle of poverty and would provide families with opportunities for economic independence and strengthened family functioning.

"(b) NATURE OF PROJECT.—In an application submitted under subsection (a), the State shall provide the following:

"(1) Except as provided in this section, the provisions of chapter 434 of the 1987 Washington Laws, as enacted in May 1987, shall apply to the operation of the Project.

"(2) All of the following terms and conditions shall be in effect under the Project:

"(A)(i) Except as provided in clause (ii), individuals with respect to whom benefits may be paid under part A of title IV of the Social Security Act, and such other individuals as are included in the Project pursuant to chapter 434 of the 1987 Washington Laws, as enacted in May 1987, shall be eligible to participate in the Project in lieu of receiving benefits under the food stamp program and cash assistance under any other Federal program covered by the Project.

"(ii) Individuals who receive only child care or medical benefits under the Project shall not be eligible to receive food assistance under the Project. Such individuals may receive coupons under the food stamp program if eligible.

"(B) Individuals who participate in the Project shall receive for each month an amount of cash assistance that is not less than the total value of the assistance such individuals would otherwise receive, in the aggregate, under the food stamp program and any cash-assistance Federal program covered by the Project for such month, including income and resource exclusions and deductions, and benefit levels.

"(C)(i) The State may provide a standard benefit for food assistance under the Project, except that individuals who participate in the Project shall receive as food assistance for a month an amount of cash that is not less than the value of the assistance such individuals would otherwise receive under the food stamp program.

"(ii) The State may provide a cash benefit for food assistance equal to the value of the thrifty food plan.

"(D) Each month participants in the Project shall be notified by the State of the amount of Project assistance that is provided as food assistance for such month.

"(E) The State shall have a program to require participants to engage in employment and training activities carried out under chapter 434 of the 1987 Washington Laws, as enacted in May, 1987.

"(F) Food assistance shall be provided under the Project—

"(i) to any individual who is accepted for participation in the Project, not later than 30 days after such individual applies to participate in the Project;

"(ii) to any participant for the period that begins on the date such participant applies to participate in the Project, except that the amount of such assistance shall be reduced to reflect the pro rata value of any coupons received under the food stamp program for such period for the benefit of such participant; and

"(iii) until—

"(I) the participant's cash assistance under the Project is terminated;

"(II) such participant is informed of such termination and is advised of the eligibility requirements for participation in the food stamp program;

"(III) the State determines whether such participant will be eligible to receive coupons as a member of a household under the food stamp program; and

"(IV) coupons under the food stamp program are received by such participant if such participant will be eligible to receive coupons as a member of a household under the food stamp program.

"(H)(i) Paragraphs (1)(B), (8), (10), and (19) of section 11(e) shall apply with respect to the participants in the Project in the same manner as such paragraphs apply with respect to participants in the food stamp program.

"(ii) Each individual who contacts the State in person during office hours to make what may reasonably be interpreted as an oral or written request to participate in the Project shall receive and shall be permitted to file on the same day that such contact is first made, an application form to participate in the Project.

"(iii) The Project shall provide for telephone contact by, mail delivery of forms to and mail return of forms by, and subsequent home or telephone interview with, the elderly persons, physically or mentally handicapped, and persons otherwise unable, solely because of transportation difficulties and similar hardships, to appear in person.

"(iv) An individual who applies to participate in the Project may be represented by another person in the review process if the other person has been clearly designated as the representative of such individual for that purpose, by such individual or the spouse of such individual, and, in the case of the review process, the representative is an adult who is sufficiently aware of relevant circumstances, except that the State may—

"(I) restrict the number of individuals who may be represented by such person; and

"(II) otherwise establish criteria and verification standards for representation under this clause.

"(v) The State shall provide a method for reviewing applications to participate in the Project submitted by, and distributing food assistance under the Project to, individ-

uals who do not reside in permanent dwellings or who have no fixed mailing address. In carrying out the preceding sentence, the State shall take such steps as are necessary to ensure that participation in the Project is limited to eligible individuals.

"(3) An assurance that the State will allow any individual to apply to participate in the food stamp program without applying to participate in the Project.

"(4) An assurance that the cost of food assistance provided under the Project will not be such that the aggregate amount of payments made under this section by the Secretary to the State over the period of the Project will exceed the sum of—

"(A) the anticipated aggregate value of the coupons that would have been distributed under the food stamp program if the individuals who participate in the Project had participated instead in the food stamp program; and

"(B) the portion of the administrative costs for which the State would have received reimbursement under—

"(i) subsections (a) and (g) of section 16 (without regard to the first proviso to such subsection (g)) if the individuals who participated in the Project had participated instead in the food stamp program; and

"(ii) section 16(h) if the individuals who participated in the Project had participated in an employment and training program under section 6(d)(4);

except that this paragraph shall not be construed to prevent the State from claiming payments for additional households that would qualify for benefits under the food stamp program in the absence of a cash out of such benefits as a result of changes in economic, demographic, and other conditions in the State or a subsequent change in the benefit levels approved by the State legislature.

"(5) An assurance that the State will continue to carry out the food stamp program while the State carries out the Project.

"(6) If there is a change in existing State law that would eliminate guaranteed benefits or reduce the rights of applicants or participants under this section during, or as a result of participation in, the Project, the Project shall be terminated.

"(7) An assurance that the Project shall include procedures and due process guarantees no less beneficial than those which are available under Federal law and under State law to participants in the food stamp program.

"(8)(A) An assurance that, except as provided in subparagraph (B), the State will carry out the Project during a 5-year period beginning on the date the first individual is approved for participation in the Project.

"(B) The Project may be terminated 180 days after—

"(i) the State gives notice to the Secretary that it intends to terminate the Project; or

"(ii) the Secretary, after notice and an opportunity for a hearing, determines that the State materially failed to comply with this section.

"(c) FUNDING.—If an application submitted under subsection (a) by the State complies with the requirements specified in subsection (b), then the Secretary shall—

"(1) approve such application; and

"(2) from funds appropriated under this Act, pay the State for—

"(A) the actual cost of the food assistance provided under the Project; and

"(B) the percentage of the administrative costs incurred by the State to provide food assistance under the Project that is equal to the percentage of the State's aggregate administrative costs incurred in operating the food stamp program in the most recent fiscal year for which data are available, that was paid under subsections (a), (g), and (h) of section 16 of this Act.

"(d)(1) PROJECT APPLICATION.—Unless and until an application to participate in the Project is approved, and food assistance under the Project is made available to the applicant—

"(A) such application shall also be treated as an application to participate in the food stamp program; and

"(B) section 11(e)(9) shall apply with respect to such application.

"(2) Coupons provided under the food stamp program with respect to an individual who—

"(A) is participating in such program; and

"(B) applies to participate in the Project;

may not be reduced or terminated because such individual applies to participate in the Project.

"(3) For purposes of the food stamp program, individuals who participate in the Project shall not be considered to be members of a household during the period of such participation.

"(e) WAIVER.—The Secretary shall (with respect to the Project) waive compliance with any requirement contained in this Act (other than this section) that (if applied) would prevent the State from carrying out the Project or effectively achieving its purpose.

"(f) CONSTRUCTION.—For purposes of any other Federal, State or local law—

"(1) cash assistance provided under the Project that represents food assistance shall be treated in the same manner as coupons provided under the food stamp program are treated; and

"(2) participants in the program who receive food assistance under the Project shall be treated in the same manner as recipients of coupons under the food stamp program are treated.

"(g) PROJECT AUDITS.—The Comptroller General of the United States shall—

"(1) conduct periodic audits of the operation of the Project to verify the amounts payable to the State from time to time under subsection (b)(4); and

"(2) submit to the Secretary of Agriculture, the Secretary of Health and Human Services, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of each such audit.

"(h) EVALUATION.—With funds appropriated under section 18(a)(1), the Secretary shall conduct, in consultation with the Secretary of Health and Human Services, an evaluation of the Project.".

TITLE II—NATIONAL ECONOMIC COMMISSION

SEC. 2101. ESTABLISHMENT OF COMMISSION.

There is established a commission to be known as the National Economic Commission (in this subtitle referred to as the "Commission").

SEC. 2102. MEMBERSHIP OF COMMISSION.

(a) APPOINTMENT.—The Commission shall be initially composed of 12 members, appointed not later than March 1, 1988. After the meeting of the Presidential Electors in December 1988, the Commission shall be expanded to 14 members. The members shall be as follows:

(1) 2 citizens of the United States, appointed by the President.

(2) 1 Senator and 2 citizens of the United States, appointed by the President pro tempore of the Senate upon the recommendations of the Majority Leader of the Senate.

(3) 1 Senator and 1 citizen of the United States, appointed by the President pro tempore of the Senate upon the recommendation of the Minority Leader of the Senate.

(4) 1 Member of the House of Representatives and 2 citizens of the United States, appointed by the Speaker of the House of Representatives.

(5) 1 Member of the House of Representatives and 1 citizen of the United States, appointed by the Minority Leader of the House of Representatives.

(6) 2 citizens of the United States, 1 of whom is a Democrat and 1 of whom is a Republican, appointed by the President-elect as established by the allocation of electoral college votes in the Presidential election of November 8, 1988.

(b) ADDITIONAL QUALIFICATIONS.—

(1) Individuals appointed under subsection (a)(1) may be officers or employees of the Executive Branch or may be private citizens.

(2) Individuals who are not Members of the Congress, and are appointed under paragraphs (2) through (6) of subsection (a) shall be individuals who—

(A) are leaders of business or labor, distinguished academics, State or local government officials, or other individuals with distinctive qualifications or experience; and

(B) are not officers or employees of the United States.

(c) CHAIRPERSON.—The Commission shall elect a Chairperson from among the members of the Commission.

(d) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(e) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

(f) VACANCIES.—Any vacancy on the Commission shall not affect its powers, but shall be filled in the manner in which the original appointment was made.

(g) PROHIBITION OF ADDITIONAL PAY.—Members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission. Members appointed from among private citizens of the United States may be allowed travel expenses, including per diem, in lieu of subsistence, as authorized by law for persons serving intermittently in the government service to the extent funds are available for such expenses.

SEC. 2103. FUNCTIONS OF COMMISSION.

(a) SPECIFIC RECOMMENDATIONS.—The Commission shall make specific recommendations regarding the following:

(1) Methods to reduce the Federal budget deficit while promoting economic growth and encouraging saving and capital formation.

(2) A means of ensuring that the burden of achieving the Federal budget deficit reduction goals of the United States does not undermine economic growth and is equitably distributed and not borne disproportionately by any one economic group, social group, region or State.

(b) FINAL REPORT.—

(1) Subject to section 2103(b)(3), the Commission shall submit to the President and to the Congress on March 1, 1989, a final report which shall contain a detailed statement of the findings and conclusions of the Commission, including its recommendations for administrative and legislative action that the Commission considers advisable.

(2) Any recommendation may be made by the Commission to the President and to the Congress only if adopted by a majority vote of the members of the Commission who are present and voting.

(3) On February 1, 1989, the President may issue an order extending the date for submission of the final report to September 1, 1989.

SEC. 2104. POWERS OF COMMISSION.

(a) HEARINGS.—The Commission may, for the purpose of carrying out this subtitle, hold such hearings and sit and act at such times and places, as the Commission may find advisable.

(b) RULES AND REGULATIONS.—The Commission may adopt such rules and regulations as may be necessary to establish its procedures and to govern the manner of its operations, organization, and personnel.

(c) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) The Commission may request from the head of any Federal agency or instrumentality such information as the Commission may require for the purpose of this subtitle. Each such agency or instrumentality shall, to the extent permitted by law and subject to the exceptions set forth in section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), furnish such information to the Commission, upon request made by the Chairperson of the Commission.

(2) Upon request of the Chairperson of the Commission, the head of any Federal agency or instrumentality shall, to the extent possible and subject to the discretion of such head—

(A) make any of the facilities and services of such agency or instrumentality available to the Commission; and

(B) detail any of the personnel of such agency or instrumentality to the Commission, on a non-reimburseable basis, to assist the Commission in carrying out its duties under this subtitle, except that any expenses of the Commission incurred under this subparagraph shall be subject to the limitation on total expenses set forth in section 2105(b).

(c) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(d) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts with State agencies, private firms, institutions, and individuals for the purpose of conducting research or surveys necessary to enable the Commission to discharge its duties under this subtitle, subject to the limitation on total expenses set forth in section 2105(b).

(e) STAFF.—Subject to such rules and regulations as may be adopted by the Commission, the Chairperson of the Commission (subject to the limitation on total expenses set forth in section 2105(b)) shall have the power to appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director, and of such additional staff as the Chairperson deems advisable to assist the Commission, at rates not to exceed a rate equal to the maximum rate for GS–18 of the General Schedule under section 5332 of such title.

(f) ADVISORY COMMITTEE.—The Commission shall be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 2105. EXPENSES OF COMMISSION.

(a) IN GENERAL.— Any expenses of the Commission shall be paid from such funds as may be available to the Secretary of the Treasury.

(b) LIMITATION.—The total expenses of the Commission shall not exceed $1,000,000.

(c) GAO AUDIT.—Prior to the termination of the Commission, pursuant to section 2106, the Comptroller General of the United States shall conduct an audit of the financial books and records of the Commission to determine that the limitation on expenses has been met, and shall include its determination in an opinion to be included in the report of the Commission.

SEC. 2106. TERMINATION OF COMMISSION.

The Commission shall cease to exist on the date that is 30 days after the date on which the Commission submits its report.

TITLE III—EDUCATION PROGRAMS

Subtitle A—Guaranteed Student Loan Program Savings

SEC. 3001. RECOVERY OF EXCESS CASH RESERVES ACCUMULATED UNDER THE GUARANTEED STUDENT LOAN PROGRAM.

(a) IN GENERAL.—Section 422 of the Higher Education Act of 1965 (20 U.S.C. 1072) is amended by adding at the end thereof the following new subsection:

"(e) REDUCTION OF EXCESS CASH RESERVES.—

"(1) LIMITATION ON MAXIMUM CASH RESERVES.—A guaranty agency shall not accumulate cash reserves in excess of the greater of—

"(A) 40 percent of the total amount paid by that agency on insurance claims during the preceding fiscal year;

"(B) 0.3 percent of original principal amount of loans that are insured by that agency and that are outstanding at the end of such preceding fiscal year;

"(C) an amount which, when combined with all other parts of total agency reserves, equals 0.4 percent of such original principal amount;

"(D) $500,000; or

"(E) the amount required to comply with the reserve requirements of a State law as in effect on October 17, 1986.

"(2) RECOVERY OF EXCESS CASH RESERVES.—The Secretary shall, not later than March 31, 1988, determine for each guaranty agency the maximum cash reserve permitted under paragraph (1) for fiscal year 1986. Subject to paragraphs (3) and (4), if the Secretary determines that any guaranty agency had, at the end of fiscal year 1986, a cash reserve that exceeded such maximum, the Secretary shall direct the agency to eliminate such excess by any one or more of the following methods, as selected by the guaranty agency:

"(A) by repaying any advances to such agency made by the Secretary under this section that are not required to be repaid under subsection (d);

"(B) by withholding and canceling claims for reimbursement otherwise payable under section 428(c)(1);

"(C) by reducing the amount of payments for which application will be made by such agency under section 428(f); or

"(D) by any other method of reducing payments from or increasing payments to the Federal Government, including payment of additional reinsurance fees in addition to the fees required by section 428(c)(9), as proposed by the agency and agreed to by the Secretary.

"(3) APPEALS BASED ON SPECIAL CIRCUMSTANCES.—(A) If the Secretary determines, on the basis of an application from a guaranty agency, that—

"(i) the agency's financial position has deteriorated significantly since the end of the preceding fiscal year;

"(ii) significant changes in the economic circumstances (such as a change in agency current cash reserves) or the loan insurance program render the limitations of paragraph (1) inadequate for the continued functioning of the agency; or

"(iii) in recovering funds as required by this subsection, a guaranty agency would be compelled to violate contractual obligations existing on the date of enactment of this subsection that require a specified level of reserve funds to be maintained by such agency;

the Secretary may waive, in whole or in part, the imposition of the remedies required by paragraph (2) for such agency.

"(B) The Secretary shall respond to request for waivers from guaranty agencies in an expedited manner and, except for unusual circumstances or with the consent of the guaranty agency, shall resolve such request within 6 weeks of submission.

"(4) RECOVERY LIMITS.—The Secretary shall not require a total reduction of cash reserves for all guaranty agencies in excess of $250,000,000 during fiscal year 1988. If the total of cash reserves of all guaranty agencies exceeds the maximum amounts permitted under paragraph (1) by more than $250,000,000, the Secretary shall ratably reduce the amounts that guaranty agencies are directed to eliminate under paragraph (2), so that the total excess cash reserves to be eliminated equals $250,000,000.

"(5) DEFINITIONS.—As used in this subsection—

"(A) the 'cash reserves' for any guaranty agency for any fiscal year are equal to the agency's cumulative cash receipts less the agency's cumulative cash disbursements at the end of such fiscal year;

"(B) the 'total reserves' for any guaranty agency for any fiscal year are equal to the agency's cash reserves plus the agency's cumulative accounts receivable less the agency's accounts payable, as of the end of such fiscal year;

"(C) the term 'cumulative cash receipts' includes such receipts as insurance premiums, Federal reinsurance payments, and collections on defaulted loans;

"(D) the term 'cumulative cash disbursements' includes such disbursements as payments for default claims, repayment of Federal advances, transfers to other State activities, and payment of collection costs and other operating costs;

"(E) the term 'accounts receivable' includes Federal reinsurance payments and administrative cost allowances owed but not yet paid to the guaranty agency, as of the end of a fiscal year; and

"(F) the term 'accounts payable' includes collections and reinsurance fees due (but not paid) to the Department of Education, as of the end of a fiscal year.".

(b) CONFORMING AMENDMENTS.—

(1) The second sentence of section 428(c)(1)(A) of such Act (20 U.S.C. 1078(c)(1)(A)) is amended by striking out "shall be deemed" and inserting "shall, subject to section 422(e), be deemed".

(2) Section 428(c)(9)(A) of such Act is amended by striking out "an amount equal to" and inserting "an amount, subject to section 422(e), equal to".

(3) The second sentence of section 428(f)(1)(B) of such Act is amended by striking out "shall be deemed" and inserting "shall, subject to section 422(e), be deemed".

SEC. 3002. REPEAL.

(a) IN GENERAL.—Subsection (e) of section 422 of the Higher Education Act of 1965 (20 U.S.C. 1072) is repealed on September 30, 1989.

(b) CONFORMING AMENDMENTS.—

(1) Effective September 30, 1989, the second sentence of section 428(c)(1)(A) of such Act (20 U.S.C. 1078(c)(1)(A)) is amended by striking out "shall, subject to section 422(e), be deemed" and inserting "shall be deemed".

(2) Effective September 30, 1989, section 428(c)(9)(A) of such Act is amended by striking out "an amount, subject to section 422(e), equal to" and inserting "an amount equal to".

(3) Effective September 30, 1989, the second sentence of section 428(f)(1)(B) of such Act is amended by striking out "shall, subject to section 422(e), be deemed" and inserting "shall be deemed".

SEC. 3003. INFORMATION ON DEFAULTS REQUIRED.

(a) GENERAL RULE.—The first sentence of section 428(k)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078(k)(1)) is amended—

(1) by striking out "In" and inserting in lieu thereof "Notwithstanding any other provision of law, in"; and

(2) by striking out "may" and inserting in lieu thereof "shall".

(b) CONFORMING AMENDMENT.—The second sentence of section 428(k)(1) of such Act is amended by striking out "may" and inserting in lieu thereof "shall".

Subtitle B—Sale of College Facilities and Housing Loans

SEC. 3101. SALE OF COLLEGE FACILITIES AND HOUSING LOANS.

Section 783 of the Higher Education Act of 1965 (20 U.S.C. 1132i-2) is amended by adding at the end thereof the following: "Notwithstanding any other provision of this title, after September 30, 1988, the Secretary shall not sell any of such obligations. Any agreement providing for delaying payment (with respect to obligations sold) until after September 30, 1988, or for delaying delivery of such obligations or delaying taking other actions in furtherance of such a sale until after such date, shall be considered to be a violation of the preceding sentence.".

TITLE IV—MEDICARE, MEDICAID, AND OTHER HEALTH-RELATED PROGRAMS

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PART 1—RELATING ONLY TO PART A

SEC. 4001. EXTENSION OF REDUCTIONS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through—

(1) March 31, 1988, with respect to payments for inpatient hospital services under such title (including payments under section 1886 of such title attributable or allocated to part A of such title); and

(2) December 31, 1987, with respect to payments for other items and services under part A of such title.

SEC. 4002. BASIC HOSPITAL PROSPECTIVE PAYMENT RATES.

(a) BASIC UPDATE FACTOR FOR PPS HOSPITALS.—Clause (i) of section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended by striking "and for fiscal year 1988" in subclause (II) and all that follows through the end of such clause and inserting after such subclause the following:

"(III) for fiscal year 1988, 3.0 percent for hospitals located in a rural area, 1.5 percent for hospitals located in a large urban area (as defined in subsection (d)(2)(D)), and 1.0 percent for other hospitals,

"(IV) for fiscal year 1989, the market basket percentage increase minus 1.5 percent for hospitals located in a rural area, the market basket percentage increase minus 2.0 percent for hospitals located in a large urban area, and the market basket percentage increase minus 2.5 percent for other hospitals, and

"(V) for fiscal year 1990 and each subsequent fiscal year, the market basket percentage for hospitals in all areas.".

(b) LARGE URBAN AREA DEFINED.—The second sentence of section 1886(d)(2)(D) of such Act (42 U.S.C. 1395www(d)(2)(D)) is amended by inserting after "under subsection (a) by regulation;" the following: "the term 'large urban area' means, with respect to a fiscal year, such an urban area which the Secretary determines (in the publication described in subsection (e)(5)(B) before the fiscal year) has a population of more than 1,000,000 (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census);".

(c) ADJUSTMENT FOR HOSPITALS IN LARGE URBAN AREAS OR IN RURAL AREAS.—

(1) IN GENERAL.—Section 1886(d)(3) of such Act (42 U.S.C. 1395ww(d)(3)) is amended—

(A) in the matter before subparagraph (A), by striking "urban or rural areas" and inserting "large urban, other urban, or rural areas";

(B) in first sentence of subparagraph (A)—

(i) by striking "The Secretary" and inserting "(i) For discharges occuring in a fiscal year beginning before October 1, 1987, the Secretary",

(ii) by striking "each of fiscal years 1985, 1986, 1987, and 1988" and inserting "the fiscal year involved", and

(iii) by striking ", and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available,";

(C) by adding at the end of subparagraph (A) the following new clauses:

"(ii) For discharges occurring in a fiscal year beginning on or after October 1, 1987, the Secretary shall compute an average standardized amount for hospitals located in a large urban area, for hospitals located in a rural area, and for hospitals located in urban areas, within the United States and within each region, equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) with respect to hospitals located in the respective areas for the fiscal year involved.

"(iii) Average standardized amounts computed under this paragraph shall be adjusted to reflect the most recent case-mix data available."; and

(D) in subparagraph (D)—

(i) by striking "URBAN AND RURAL HOSPITALS" in the heading and inserting "HOSPITALS IN DIFFERENT AREAS",

(ii) in clause (i), by inserting "(or, for discharges occurring on or after April 1, 1988, in a large urban area or other urban area)" after "urban area" the first place it appears, and

(iii) in clause (i), by inserting "such" before "an urban area" the second place it appears.

(2) CONFORMING AMENDMENTS.—Section 1886(d)(9)(A) of such Act (42 U.S.C. 1395ww(d)(9)(A)) is amended—

(A) in clause (ii)(I), by striking "an urban area, and" and inserting "a large urban area,";

(B) by redesignating subclause (II) of clause (ii) as subclause (III); and

(C) by inserting after subclause (I) of clause (ii) the following new subclause:

"(II) such rate for hospitals located in other urban areas, and".

(d) ESTABLISHMENT OF REGIONAL FLOOR.—Section 1886(d)(1)(A)(iii) of such Act (42 U.S.C. 1395ww(d)(1)(A)(iii)) is amended by inserting before the period at the end the following: ", or, if greater for discharges occurring during the period beginning on April 1, 1988, and ending on September 30, 1990, the sum of (I) 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, and (II) 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph".

(e) UPDATE FOR PPS-EXEMPT HOSPITALS.—Section 1886(b)(3)(B) of such Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(1) in clause (i), by striking "subparagraph (A) for 12-month cost reporting periods beginning during a fiscal year and for purposes of",

(2) in clause (ii), by striking "(ii) For purposes of clause (i)" and inserting "(iii) For purposes of this subparagraph", and

(3) by inserting after clause (i) the following new clause:

"(ii) For purposes of subparagraph (A), the 'applicable percentage increase' for 12-month cost reporting periods beginning during—

"(I) fiscal year 1986, is 0.5 percent,

"(II) fiscal year 1987, is 1.15 percent,

"(III) fiscal year 1988, is the market basket percentage increase minus 2.0 percentage points, and

"(IV) subsequent fiscal years is the market basket percentage increase.".

(f) RELATED CONFORMING AND TECHNICAL AMENDMENTS.—

(1) Section 1886 of such Act (42 U.S.C. 1395ww) is further amended—

(A) by adding at the end of subsection (d)(2)(D) the following new sentence: "For purposes of payment under this subsection, a hospital is considered to be located in an urban area or large urban area, respectively, if the hospital is paid under this subsection at the rate for hospitals located in such an area.";

(B) in subsection (e)(3)(B), by striking "or determine";

(C) in subsection (e)(4)—

(i) by striking "for fiscal year 1988" and inserting "for each fiscal year (beginning with fiscal year 1988)",

(ii) by striking "and shall determine for each subsequent fiscal year" and all that follows through "fiscal year, and", and

(iii) by amending the last sentence to read as follows: "The appropriate change factor may be different for all large urban subsection (d) hospitals, other urban subsection (d) hospitals, urban subsection (d) Puerto Rico hospitals, rural subsection (d) hospitals, and rural subsection (d) Puerto Rico hospitals, and all other hospitals and units not paid under subsection (d), and may vary among such other hospitals and units."; and

(D) in paragraph (5), by striking "or determination" each place it appears.

(2) Subsection (a)(1)(B)(ii) of section 107 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119) is amended, effective as of the date of the enactment of such Act, by inserting ", the target percentage and DRG percentage shall be those specified in subsection (d)(1)(C)(iv) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 0 percent" before the period at the end.

(g) EFFECTIVE DATES.—

(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (6))—

(A) the amendments made by subsections (a) and (c) shall apply to payments made under section 1886(a)(1)(A)(iii) of

the Social Security Act on the basis of discharges occurring on or after April 1, 1988, and

(B) for discharges occurring on or after October 1, 1988, the applicable percentage increase (described in section 1886(d)(3)(B) of such Act)) for discharges occurring during fiscal year 1987 is deemed to have been such percentage increase as amended by subsection (a).

(2) PPS SOLE COMMUNITY HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital which receives payments made under section 1886(d)(1)(A) of the Social Security Act because it is a sole community hospital—

(A) the amendment made by subsections (a) and (c) shall apply to payments under section 1886(d)(1)(A)(ii)(I) of the Social Security Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting period beginning on or after October 1, 1987;

(B) notwithstanding subparagraph (A), for cost reporting period beginning during fiscal year 1988, the applicable percentage increase (as defined in section 1886(d)(3)(B) of such Act) for the—

(i) first 51 days of the cost reporting period shall be 0 percent,

(ii) next 132 days of such period shall be 2.7 percent, and

(iii) remainder of such period of the cost reporting period shall be the applicable percentage increase (as so defined, as amended by subsection (a)); and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been the applicable percentage increase (as so defined, as amended by subsection (a)).

(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

(A) the amendments made by subsection (e) shall apply to cost reporting periods beginning on or after October 1, 1987;

(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1988, payment under title XVIII of the Social Security Act shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) of such Act were equal to the product of 2.7 percent and the ratio of 315 to 366; and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1988 shall be deemed to have been 2.7 percent.

(4) DEFINITION, REGIONAL FLOOR, AND TECHNICAL AND CONFORMING AMENDMENTS.—The amendments made by subsections (b) and (d) and paragraphs (1) and (2) of subsection (f) shall take effect on the date of the enactment of this Act.

(5) TRANSITION FOR LARGE URBAN AREA RATES.—In computing the average standardized amount for hospitals located in a

large urban area or other urban area under section 1886(d)(3)(A)(ii) of the Social Security Act (as amended by subsection (c)) for fiscal year 1988, the reference to "the respective average standardized amount computed for the previous fiscal year under this subparagraph" is deemed a reference to the average standardized amount computed for hospitals located in an urban area for the 51-day period beginning on October 1, 1987.

(6) DEFINITION.—In this subsection, the term "subsection (d) hospital" has the meaning given such term in section 1886(d)(10)(B) of the Social Security Act.

SEC. 4003. INCREASE IN DISPROPORTIONATE SHARE ADJUSTMENT AND REDUCTION IN INDIRECT MEDICAL EDUCATION PAYMENTS.

(a) REDUCTION IN INDIRECT MEDICAL EDUCATION PAYMENTS.—

(1) Section 1886(d)(5)(B)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(A) in subclause (I), by striking "2" and inserting in lieu thereof "1.89"; and

(B) in subclause (II), by striking "1.5" and inserting in lieu thereof "1.43".

(2) Section 1886(d)(3)(C)(ii) of such Act (42 U.S.C. 1395ww(d)(3)(C)(ii)) is amended by inserting "and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987" after "1985" each place it appears in subclauses (I) and (II).

(b) INCREASE IN DISPROPORTIONATE SHARE ADJUSTMENT.—Section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(B))—

(1) in clause (iii), by striking "15 percent" and inserting "25 percent", and

(2) in clause (iv)(I), by striking "the lesser of 15 percent, or".

(c) EXTENSION OF DISPROPORTIONATE SHARE ADJUSTMENT.—Sections 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)), 1886(d)(3)(C)(ii)(I) (42 U.S.C. 1395ww(d)(3)(C)(ii)(I)), 1886(d)(3)(C)(ii)(II) (42 U.S.C. 1395ww(d)(3)(C)(ii)(II)), 1886(d)(5)(B)(ii)(I) (42 U.S.C. 1395ww(d)(5)(B)(ii)(I)), 1886(d)(5)(B)(ii)(II) (42 U.S.C. 1395ww(d)(5)(B)(ii)(II)), and 1886(d)(5)(F)(i) (42 U.S.C. 1395ww(d)(5)(F)(i)) of the Social Security Act are each amended by striking "1989" and inserting in lieu thereof "1990".

(d) SPECIAL RULE.—In the case of a hospital which—

(1) consists of 2 inpatient hospital facilities which are more than 4 miles apart and each of which is in a separate political jurisdiction within the same State and one of which meets the criteria under section 1886(d)(5)(F) of the Social Security Act for serving a significantly disproportionate number of low-income patients as if that facility were a separate hospital; and

(2) receives payments for inpatient hospital services under title XVIII of the Social Security Act which are less than the hospital's reasonable costs,

the Secretary of Health and Human Services, upon application by the hospital, may treat each of the facilities of hospital as separate hospitals for purposes of applying section 1886(d)(5)(F) of the Social Security Act, for discharges occurring on or after October 1, 1988.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments for discharges occurring on or after October 1, 1988.

SEC. 4004. PROVISIONS RELATING TO WAGE INDEX.

(a) SURVEY.—Section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) is amended by adding at the end the following: "Not later than October 1, 1990 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. To the extent determined feasible by the Secretary, such survey shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.".

(b) CLINIC HOSPITAL WAGE INDICES.—In calculating the wage index under section 1886(d) of the Social Security Act for purposes of making payment adjustments after September 30, 1988, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution which received the waiver specified in section 602(k) of the Social Security Amendments of 1983, the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term "wage costs" does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Metropolitan Statistical Area.

SEC. 4005. RURAL HOSPITALS.

(a) REVISION OF STANDARDS FOR INCLUDING A RURAL COUNTY IN AN URBAN AREA.—

(1) TREATING CERTAIN RURAL HOSPITALS ADJACENT TO URBAN AREAS AS URBAN HOSPITALS.—Section 1886(d)(8) of the Social Security Act (42 U.S.C. 1395ww(d)(8))—

(A) by redesignating clauses (i) and (ii) of subparagraphs (A) and (B) as subclauses (I) and (II), respectively,

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by inserting "(A)" after "(8)", and

(D) by adding at the end the following new subparagraph:

"(B) The Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute, if—

"(i) the rural county would otherwise be considered part of an urban area but for the fact that the rural county does not meet the standard relating to the rate of commutation between the rural county and the central county or counties of any adjacent urban area; and

"(ii) either (I) the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area is equal to at least 15 percent of the

number of residents of the rural county who are employed, or (II) the sum of the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area and the number of residents of any adjacent urban area who commute for employment to the rural county is at least equal to 20 percent of the number of residents of the rural county who are employed.

"(C) The Secretary shall make a proportional adjustment in the standardized amount determined under paragraph (3) for hospitals located in an urban area to assure that the provisions of subparagraph (B) do not result in aggregate payments under this section that are greater or less than those that would otherwise be made. The Secretary shall make such adjustment in payments under this section to hospitals located in rural areas as are necessary to assure that the aggregate of payments to rural hospitals not affected by subparagraph (B) are not changed as a result of the application of subparagraph (B).".

(2) LOCATION OF HOSPITAL.—For purposes of section 1886 of the Social Security Act, Watertown Memorial Hospital in Watertown, Wisconsin is deemed to be located in Jefferson County, Wisconsin.

(3) EFFECTIVE DATE.—This section, and the amendments made by paragraph (1), shall apply to discharges occurring on or after October 1, 1988.

(b) EXPANSION OF SWING-BED PROGRAM.—

(1) EXPANSION TO HOSPITALS WITH FEWER THAN 100 BEDS.—Section 1883(b)(1) of the Social Security Act (42 U.S.C. 1395tt(b)(1)) is amended by striking "50 beds" and inserting "100 beds".

(2) REQUIREMENTS FOR HOSPITALS WITH MORE THAN 49 BEDS.—Section 1883(d) of such Act (42 U.S.C. 1395dd(d)) is amended—

(A) by inserting "(1)" after "(d)", and

(B) by adding at the end the following new paragraphs:

"(2)(A) Any agreement under this section with a hospital with more than 49 beds shall provide that no payment may be made for extended care services which are furnished to an extended care patient after the end of the 5-day period (excluding weekends and holidays) beginning on an availability date for a skilled nursing facility, unless the patient's physician certifies, within such 5-day period, that the transfer of that patient to that facility is not medically appropriate on the availability date. The Secretary shall prescribe regulations to provide for notice by skilled nursing facilities of availability dates to hospitals which have agreements under this section and which are located within the same geographic region (as defined by the Secretary).

"(B) In this paragraph:

"(i) The term 'availability date' means, with respect to an extended care patient at a hospital, any date on which a bed is available for the patient in a skilled nursing facility located within the geographic region in which the hospital is located.

"(ii) The term 'extended care patient' means an individual being furnished extended care services at a hospital pursuant to an agreement with the Secretary under this section.

"(3) In the case of an agreement for a cost reporting period under this section with a hospital that has more than 49 beds, payment may not be made in the period for patient-days of extended care services that exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the period."

(3) REPORT.—The Secretary of Health and Human Services shall report to Congress, not later than February 1, 1989, concerning—

(A) the proportion of admissions to hospitals for extended care services under section 1883 of the Social Security Act which are denied or approved by a peer review organization under section 1154(a)(1) of such Act, and

(B) on recommendations for methods of encouraging hospitals that—

(i) have a low occupancy rate,

(ii) are eligible to enter (but have not entered) into an agreement under section 1883 of such Act, and

(iii) are located in areas with a need for additional providers of extended care services,

to enter into such agreements.

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to agreements under section 1883 of the Social Security Act entered into after March 31, 1988.

(c) PAYMENTS TO SOLE COMMUNITY HOSPITALS.—

(1) Section 1886(d)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(ii)) is amended—

(A) by striking "1988" in the second sentence and inserting "1990", and

(B) by inserting after the second sentence the following: "A subsection (d) hospital that meets the criteria for classification as a sole community hospital and otherwise qualifies for the adjustment authorized by the preceding sentence may qualify for such an adjustment without regard to the formula by which payments are determined for the hospital under paragraph (1)(A).".

(2)(A) The amendments made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1987.

(B) The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act by reason of the amendment made by paragraph (1)(B) does not exceed $5,000,000 in the case of fiscal year 1988 and $10,000,000 for fiscal year 1989.

(d) MEDICARE CLASSIFICATION OF RURAL REFERRAL CENTERS.—

(1) EXTENSION OF CLASSIFICATION.—

(A) IN GENERAL.—The first sentence of section 1886(d)(5)(C)(i)(I) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(i)(I)) is amended by striking "500" and inserting "275".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to discharges occurring on or after April 1, 1988.

(2) STUDY.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall provide for a study of the criteria used for the classification of hospitals as rural referral centers under section 1886(d)(5)(C)(i) of the Social Security Act. The study shall include an examination of—

(i) the extent that hospitals classified as rural referral centers receive more or less than their actual costs of providing inpatient hospital services, and

(ii) the appropriateness of providing for payment for such centers at a rate other than the rate for a hospital located in an other urban area.

(B) REPORT.—The Secretary shall report to Congress, by not later than March 1, 1989, on the study conducted under subparagraph (A) and on recommendations for the criteria that should be applied under section 1886(d)(5)(C)(i) of the Social Security Act for the classification of hospitals as rural referral centers for cost reporting periods beginning on or after October 1, 1989.

(e) GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION.—

(1) The Administrator of the Health Care Financing Administration, in consultation with the Assistant Secretary for Health (or a designee), shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

(A) Changes in clinical practice patterns.

(B) Changes in service populations.

(C) Declining demand for acute-care inpatient hospital capacity.

(D) Declining ability to provide appropriate staffing for inpatient hospitals.

(E) Increasing demand for ambulatory and emergency services.

(F) Increasing demand for appropriate integration of community health services.

(G) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

(H) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

Each demonstration project under this subsection shall demonstrate methods of strengthening the financial and managerial capability of the hospital involved to provide necessary services. Such methods may include programs of cooperation with other health care providers, of diversification in services furnished (including the provision of home health services), of physician recruitment, and of improved management systems.

(2) For purposes of this subsection, the term "eligible small rural hospital" means any non-Federal, short-term general acute care hospital that—

(A) is located in a rural area (as determined in accordance with subsection (d)),

(B) has less than 100 beds, and

(C) is not for profit.

(3)(A) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the factors specified in paragraph (1) may submit an application to the Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than 24 months) for completion of the project. The application shall be submitted on or before a date specified by the Administrator and shall be in such form as the Administrator may require.

(B) The Governor shall transmit any application submitted pursuant to subparagraph (A) to the Secretary not later than 30 days after it is received by the Governor, accompanied by any comments with respect to the application that the Governor deems appropriate.

(C) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under subparagraph (A).

(4) A hospital shall be considered to be located in a rural area for purposes of this subsection if it is treated as being located in a rural area for purposes of section 1886(d)(3)(D) of the Social Security Act.

(5) In determining which hospitals making application under paragraph (3) will receive grants under this subsection, the Administrator shall take into account—

(A) any comments received under paragraph (3)(B) with respect to a proposed project;

(B) the effect that the project will have on—

(i) reducing expenditures from the Federal Hospital Insurance Trust Fund,

(ii) improving the access of medicare beneficiaries to health care of a reasonable quality;

(C) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

(i) the primary market or service area of the hospital, and

(ii) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

(D) the degree of coordination that may be expected between the proposed project and—

(i) other local or regional health care providers, and

(ii) community and government leaders,

as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

(6) A grant to a hospital under this subsection may not exceed $50,000 a year and may not exceed a term of 2 years.

(7)(A) Except as provided in subparagraphs (D) and (C), a hospital receiving a grant under this subsection may use the grant

for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

(B) A hospital receiving a grant under this subsection for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

(C) Not more than one-third of any grant made under this subsection may be expended for capital-related costs (as defined by the Secretary for purposes of section 1886(a)(4) of the Social Security Act) of the project.

(8)(A) A hospital receiving a grant under this section shall furnish the Administrator with such information as the Administrator may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

(B) The Administrator shall report to the Congress at least once every 6 months on the program of grants established under this subsection. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

(C) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

(9) For purposes of carrying out the program of grants under this subsection, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for each of the fiscal years 1989 and 1990.

SEC. 4006. PAYMENTS FOR HOSPITAL CAPITAL.

(a) REDUCTIONS IN PAYMENTS FOR CAPITAL.—Section 1886(g)(3)(A) of the Social Security Act (42 U.S.C. 1395ww(g)(3)(A)) is amended—

(A) in clause (ii), by striking ", and" and inserting "on or after October 1, 1987, and before January 1, 1988,",

(B) by striking clause (iii) and inserting the following:

"(iii) 12 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) in fiscal year 1988, occurring on or after January 1, 1988, and

"(iv) 15 percent to portions of cost reporting periods or discharges (as the case may) be occuring during fiscal year 1989.".

(b) PROSPECTIVE PAYMENT FOR CAPITAL-RELATED COSTS.—

(1) IN GENERAL.—Paragraph (1) of section 1886(g) of such Act (42 U.S.C. 1395 ww (g)) is amended to read as follows:

"(g)(1)(A) Notwithstanding section 1861(v), instead of any amounts that are otherwise payable under this title with respect to the reasonable costs of subsection (d) hospitals and subsection (d) Puerto Rico hospitals for capital-related costs of inpatient hospital services, the Secretary shall, for hospital cost reporting periods beginning on or after October 1, 1991, provide for payments for such costs in accordance with a prospective payment system established by the Secretary.

"(B) Such system—

"(i) shall provide for (I) a payment on a per discharge basis, and (II) an appropriate weighting of such payment amount as relates to the classification of the discharge;

"(ii) may provide for an adjustment to take into account variations in the relative costs of capital and construction for the different types of facilities or areas in which they are located;

"(iii) may provide for such exceptions (including appropriate exceptions to reflect capital obligations) as the Secretary determines to be appropriate, and

"(iv) may provide for suitable adjustment to reflect hospital occupancy rate.

"(C) In this paragraph, the term 'capital-related costs' has the meaning given such term by the Secretary under subsection (a)(4) as of September 30, 1987, and does not include a return on equity capital.".

(2) CONFORMING AMENDMENT.—Section 1886 of such Act is amended—

(A) in subsection (a)(4), by striking "with respect to costs incurred in cost reporting periods beginning prior to October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select), other capital-related costs, as defined by the Secretary" and inserting "other capital-related costs (as defined by the Secretary for periods before October 1, 1987)", and

(B) by striking subparagraph (C) of subsection (g)(3).

(3) EFFECTIVE DATES.—The amendment made by paragraph (1) shall take effect on October 1, 1987. The amendments made by paragraph (2) shall apply to cost reporting periods beginning on or after October 1, 1987.

(c) PROPAC REPORT ON ADJUSTMENT FOR HOSPITAL OCCUPANCY.—The Prospective Payment Assessment Commission shall study and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, by not later than May 1, 1988, on the suitability and feasibility of linking payment for capital-related costs under part A of title XVIII of the Social Security Act to hospital occupancy rates.

SEC. 4007. REPORTING HOSPITAL INFORMATION.

(a) DEVELOPMENT OF DATA BASE.—The Secretary of Health and Human Services, (in this section referred to as the "Secretary") shall develop and place into effect not later than June 1, 1989, a data base of the operating costs of inpatient hospital services with respect to all hospitals under title XVIII of the Social Security Act, which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data base under this subsection may include data from preliminary cost reports (but the Secretary shall make available an updata analysis of the differences between preliminary and settled cost reports).

(b) REPORTING OF INFORMATION ELECTRONICALLY.—Subject to paragraph (2), with respect to hospital cost reporting periods beginning on or after October 1, 1989, the Secretary shall place into effect a standardized electronic cost reporting format for hospitals under the medicare program.

(2) The Secretary may delay or waive the implementation of such format in particular instances where such implementation would result in financial hardship (in particular with respect to a small percentage of medicare volume).

(c) DEMONSTRATION PROJECT.—

(1) The Secretary of Health and Human Services shall provide for a 3-year demonstration project to develop, and determine the costs and benefits of establishing a uniform system for the reporting by medicare participating hospitals of balance sheet and information described in paragraph (2). In contracting the project, the Secretary shall require hospitals in at least 2 States, one of which maintains a uniform hospital reporting system, to report such information based on standard information established by the Secretary.

(2) The information described in this paragraph is as follows:

(A) Hospital discharges (classified by category of service and by class of primary payer).

(B) Patient days (classified by category of service and by class of primary payer).

(C) Licensed beds, staffed beds, and occupancy (by category of service).

(D) Outpatient visits (classified by class of primary payer).

(E) Inpatient charges and revenues (classified by class of primary payer).

(F) Outpatient charges and revenues (classified by class of primary payer).

(G) Inpatient and outpatient hospital expenses (by cost-center classified for operating and capital).

(H) Reasonable costs.

(I) Other income.

(J) Uncompensated care (classified by bad debt and charity care).

(K) Capital acquisitions.

(L) Capital assets.

(3) The Secretary shall develop the system under subsection (c) in a manner so as—

(A) to facilitate the submittal of the information in the report in an electronic form, and

(B) to be compatible with the needs of the medicare prospective payment system.

(4) The Secretary shall prepare and submit, to the Prospective Payment Assessment Commission, the Comptroller General, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, by not later than 45 days after the end of each calendar quarter, data collected under the system.

(5) In paragraph (3):

(A) The terms "bad debt" and "charity care" have such meanings as the Secretary establishes.

(B) The term "class" means, with respect to payers, the programs under this title VIII of the Social Security Act, a State plan approved under title XIX of such Act, other third party-payers, and self-paying individuals.

(7) The Secretary shall set aside at least $1,000,000 for each of fiscal years 1988, 1989, and 1990 from existing research funds to develop the format, according to paragraph (1), and at least $2,000,000 from program operations funds for data collection and analysis, but total funds shall not exceed $15,000,000 over 3 years.

(8) The Comptroller General shall analyze the adequacy of the existing system for reporting of hospital information and the costs and benefits of data reporting under the demonstration system and will recommend improvements in hospital data collection and in analysis and display of data in support of policy making.

(d) CONSULTATION.—The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.

SEC. 4008. OTHER PROVISIONS RELATING TO PAYMENT FOR INPATIENT HOSPITAL SERVICES.

(a) MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this Act, and before January 1, 1989, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the statewide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

(b) CLARIFICATION OF SECTION 1814(b) STATE WAIVER AUTHORITY.—

(1) APPLICATION OF AGGREGATE TEST.—Section 1814(b)(3)(B) of the Social Security Act (42 U.S.C. 1395f(b)(3)(B)) is amended by striking "rate of increase for the previous three-year period" and inserting "aggregate rate of increase from October 1, 1983, to the most recent date for which annual data are available".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(c) CONTINUATION OF BAD DEBT RECOGNITION FOR HOSPITAL SERVICES.—In making payments to hospitals under title XVIII of the Social Security Act, the Secretary of Health and Human Services shall not make any change in the policy in effect on August 1, 1987, with respect to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title (including criteria for what constitutes a reasonable collection effort).

(d) HOSPITAL OUTLIER PAYMENTS AND POLICY.—

(1) INCREASE IN OUTLIER PAYMENTS FOR BURN CENTER DRGS.—

(A) IN GENERAL.—For discharges classified in diagnosis-related groups relating to burn cases and occurring on or after April 1, 1988, and before October 1, 1989, the marginal cost of care permitted by the Secretary of Health and Human Services under section 1886(d)(5)(A)(iii) of the Social Security Act shall be 90 percent of the appropriate

per diem cost of care or 90 percent of the cost for cost outliers.

(B) BUDGET NEUTRALITY.—Subparagraph (A) shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act are not increased or decreased by reason of the adjustments required by such subparagraph.

(2) LIMITATION ON CHANGES IN OUTLIER REGULATIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before September 1, 1988, any final regulation which changes the method of payment for outlier cases under section 1886(d)(5)(A) of the Social Security Act.

(B) PROPAC REPORT.—The chairman of the Prospective Payment Assessment Commission shall report to the Congress and the Secretary of Health and Human Services, by not later than June 1, 1988, on the method of payment for outlier cases under such section and providing more adequate and appropriate payments with respect to burn outlier cases.

(3) REPORT ON OUTLIER PAYMENTS.—The Secretary of Health and Human Services shall include in the annual report submitted to the Congress pursuant to section 1875(b) of the Social Security Act a comparison with respect to hospitals located in an urban area and hospitals located in a rural area in the amount of reductions under section 1886(d)(3)(B) of the Social Security Act and additional payments under section 1886(d)(5)(A) of such Act.

(e) MISCELLANEOUS ACCOUNTING PROVISION.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, subsection (d) of section 9307 of such Act is amended to read as follows:

"(d) MISCELLANEOUS ACCOUNTING PROVISION.—Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(A) of the Social Security Act, in the case of a hospital that—

"(1) had a cost reporting period beginning on September 28, 29, or 30 of 1985,

"(2) is located in a State in which inpatient hospital services were paid in fiscal year 1985 pursuant to a Statewide demonstration project under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972, and

"(3) elects, by notice to the Secretary of Health and Human Services by not later than April 1, 1988, to have this subsection apply,

during the first 7 months of such cost reporting period the 'target percentage' shall be 75 percent and the 'DRG percentage' shall be 25 percent, and during the remaining 5 months of such period the 'target percentage' and the 'DRG percentage' shall each be 50 percent.".

SEC. 4009. MISCELLANEOUS PROVISIONS.

(a) RESPONSIBILITIES OF MEDICARE HOSPITALS IN EMERGENCY CASES.—

(1) INCREASE IN CIVIL MONETARY PENALTY.—Section 1867(d)(2) of the Social Security Act (42 U.S.C. 1395dd(d)(2)) is amended by striking "$25,000" and inserting "$50,000".

(2) EXCLUSION FROM MEDICARE PROGRAM FOR VIOLATIONS.—Section 1867(d)(1) of such Act is amended by adding at the end the following new sentence:

"If a civil money penalty is imposed on a responsible physician under paragraph (2), the Secretary may impose the sanction described in section 1842(j)(2)(A) (relating to barring from participation in the medicare program) in the same manner as it is imposed under section 1842(j).".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions occurring on or after the date of the enactment of this Act.

(b) DESIGNATION OF PEDIATRIC HOSPITALS AS MEETING CERTIFICATION AS HEART TRANSPLANT FACILITY.—For purposes of determining whether a pediatric hospital that performs pediatric heart transplants meets the criteria established by the Secretary of Health and Human Services for facilities in which the heart transplants performed will be considered to meet the requirement of section 1862(a)(1)(A) of the Social Security Act, the Secretary shall treat such a hospital as meeting such criteria if—

(1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria,

(2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and

(3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

(c) WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE.—Subsection (a) of section 9307 of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) by striking "TEMPORARY" in the heading, and

(2) by striking "for hospice care provided before October 1, 1988,".

(d) REVISION OF APPOINTMENT PROCESS FOR PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.—

(1) IN GENERAL.—Section 1886(e)(6)(B) of the Social Security Act (42 U.S.C. 1395ww(e)(6)(B)) is amended—

(A) in the first sentence, by striking "provide expertise and experience in the provision and financing of health care" and inserting "include individuals with national recognition for their expertise in health economics, hospital reimbursement, hospital financial management, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives,"; and

(B) by striking the last sentence.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to appointments made after the date of the enactment of this Act.

(e) PSYCHOLOGISTS' SERVICES FURNISHED TO HOSPITAL INPATIENTS.—

(1) IN GENERAL.—Section 1861(b)(3) of such Act (42 U.S.C. 1395x(b)(3)) is amended by inserting "(including clinical psychologist (as defined by the Secretary))" after "others" the first place it appears.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to services furnished on or after April 1, 1988.

(f) HOSPITAL CONDITION OF PARTICIPATION RELATED TO INDIVIDUAL RESPONSIBLE FOR CARE OF PATIENT.—Section 1861(e)(4) of such Act (42 U.S.C. 1395x(e)(4)) is amended by inserting "with respect to whom payment may be made under this title" after "patient".

(g) DELAY IN REQUIREMENTS RELATING TO HOSPITAL STANDARDS FOR ORGAN TRANSPLANTS AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES.—

(1) Section 9318(b)(2) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 107(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, is amended by striking "November 21, 1987" and inserting "March 31, 1988".

(2) The amendment made by paragraph (1) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(h) PROPAC STUDIES AND REPORTS.—

(1) PROPAC REPORTS ON STUDY OF DRG RATES FOR HOSPITALS IN RURAL AND URBAN AREAS.—The Prospective Payment Assessment Commission shall evaluate the study conducted by the Secretary of Health and Human Services pursuant to section 603(a)(2)(C)(i) of the Social Security Amendments of 1983 (relating to the feasibility, impact, and desirability of eliminating or phasing out separate urban and rural DRG prospective payment rates) and report its conclusions and recommendations to the Congress not later than March 1, 1988.

(2) PROPAC REPORT ON SEPARATE URBAN PAYMENT RATES.—The Prospective Payment Assessment Commission shall evaluate the desirability of maintaining separate DRG prospective payment rates for hospitals located in large urban areas (as defined in section 1886(d)(2)(D)) of the Social Security Act) and in other urban areas, and shall report to Congress on such evaluation not later than January 1, 1989.

(3) REPORT ON ADJUSTMENT FOR NON-LABOR COSTS.—The Prospective Payment Assessment Commission shall perform an analysis to determine the feasibility and appropriateness of adjusting the non-wage-related portion of the adjusted average standardized amounts under section 1886(d)(3) of the Social Security Act based on area differences in hospitals' costs (other than wage-related costs) and input prices. The Commission shall report to the Congress on such analysis by not later than October 1, 1989.

(i) SPECIAL RULE.—In the case of New England county metropolitan areas, the Secretary of Health and Human Services shall apply the second sentence of section 1886(d)(2)(D) of the Social Security Act, as amended by section 4001(b) of this subtitle, as though 970,000 were substituted for 1,000,000.

(j) TECHNICAL CORRECTIONS.—

(1) Section 1886(a)(4) of the Social Security Act (42 U.S.C. 1395ww(a)(4)) is amended by inserting a comma after "educational activities".

(2) Section 1886(d)(5)(C)(i)(II) of such Act (42 U.S.C. 1395ww(d)(5)(C)(i)(II)) is amended by inserting "index" after "case mix" both places it appears.

(3) Section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(A) in clause (i)(II), by striking "such revenues" the second place it appears and inserting "such net inpatient care revenues", and

(B) in clause (iv)(I), by striking "subclause (III)" and inserting "clause (v)".

(4) Section 1886(d)(9) of such Act (42 U.S.C. 1395ww(d)(9)) is amended by moving the matter in subparagraph (B) before clause (i) 2 ems to the left so the left margin of such matter is aligned with the left margin of the matter in subparagraph (A) before clause (i).

(5) Section 1886(h)(4)(C) of such Act (42 U.S.C. 1395ww(h)(4)(C)) is amended by striking "subparagraph (E)" and inserting "subparagraph (D)".

(6) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986—

(A) subparagraph (B) of section 9307(c)(1) of such Act is amended to read as follows:

"(B) in paragraph (2)—

"(i) by striking subparagraphs (A) and (B),

"(ii) in subparagraph (C), by striking 'such subsection' and inserting 'of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)' and by redesignating such subparagraph as subparagraph (A), and

"(iii) by amending subparagraph (D) to read as follows: " '(B) The amendments made by subparagraph (A) apply to discharges occurring on or after May 1, 1986.' ";

(B) section 9302(a)(2)(C) of such Act is amended by striking "1866(e)(5)" and inserting "1886(e)(5)";

(C) section 9320(h)(1) of such Act is amended by striking "before the period" and inserting "before the semicolon";

(D) section 9321(c)(4) of such Act is amended by striking "second sentence" and all that follows through "operating costs" and inserting "second sentence of section 1886(a)(4) of the Social Security Act, from the term 'operating costs";

(E) the second sentence of section 9335(d)(2) of such Act is amended by striking "establish" and inserting "designate"; and

(F) section 9321(c)(3) of such Act is amended by inserting "section 1861(v)(1)(O) and 1886(g)(2) of the Social Security Act and" after "implementing".

(7) Section 218(v) of the Social Security Act (42 U.S.C. 418(v)) is amended by striking paragraph (3).

(8) Effective as if included in the Tax Reform Act of 1986, section 1895(d)(6)(C) of such Act is amended by striking "603" and inserting "2203".

PART 2—PROVISIONS RELATING TO PARTS A & B

Subpart A—Health Maintenance Organization Reforms

SEC. 4011. BENEFICIARY PROTECTION.

(a) POST-CONTRACT PROTECTION FOR ENROLLEES WITH ELIGIBLE ORGANIZATIONS UNDER THE MEDICARE PROGRAM.—

(1) Section 1876(c)(3) of such Act (42 U.S.C. 1395mm(b)(2)) is amended by adding at the end the following new subparagraph:

"(F) Each eligible organization that provides items and services pursuant to a contract under this section shall provide assurances to the Secretary that in the event the organization ceases to provide such items and services, the organization shall provide or arrange for supplemental coverage of benefits under this title related to a pre-existing condition with respect to any exclusion period, to all individuals enrolled with the entity who receive benefits under this title, for the lesser of six months or the duration of such period.".

(2) The amendment made by paragraph (1) shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act.

(b) NOTIFICATION OF TERMINATION OF RISK-SHARING CONTRACT.—

(1) Section 1876(c)(3) of such Act, as amended by subsection (a)(1), is further amended by adding at the end the following new subparagraph:

"(G)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

"(I) the organization is authorized by law to terminate or refuse to renew the contract, and

"(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

"(ii) The notice required by clause (i) shall be included in—

"(I) any marketing materials described in subparagraph (C) that are distributed by an eligible organization to individuals eligible to enroll under this section with the organization, and

"(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).".

(2) The amendment made by paragraph (1) shall apply to contracts entered into or renewed on or after the date of the enactment of this Act.

SEC. 4012. PAYMENTS FOR HOSPITAL SERVICES.

(a) IN GENERAL.—Section 1866(a)(1) of such Act (42 U.S.C. 1395cc(a)(1)) is amended by inserting immediately after subparagraph (N) the following new subparagraph:

"(O) in the case of hospitals and skilled nursing facilities, to accept as payment in full for inpatient hospital and extended care services that are covered under this title and are furnished to any individual enrolled with an eligible organization with a risk-sharing contract under section 1876 the amounts (in the case of hospitals) or limits (in the case of skilled nursing facilities) that would be made as a payment in full under this title if the individuals were not so enrolled.".

(b) REPEAL.—Section 1876(g)(4) of the Social Security Act (42 U.S.C. 1395mm(g)(4)) is repealed.

(c) IMPLEMENTATION.—The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations under section 1876 of the Social Security Act medicare DRG rates for payments required by the amendment made by paragraph (2) and data on cost pass-through items for all inpatient services provided to medicare beneficiaries enrolled with such organizations.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to admissions occurring on or after April 1, 1988, or, if later, the earliest date the Secretary can provide the information required under subsection (c) in machine readable form.

SEC. 4013. TWO-YEAR EXTENSION ON PERIOD FOR BENEFIT STABILIZATION.

(a) IN GENERAL.—Section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)), as added by the amendment made by section 2350(a)(2) of the Deficit Reduction Act of 1984, is amended by striking "four" and inserting "six"

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of the amendment made by section 2350(a)(2) of the Deficit Reduction Act of 1984.

SEC. 4014. CIVIL MONEY PENALTIES AND INTERMEDIATE SANCTIONS AGAINST HMOS/CMPS.

Section 1876(i)(6) of the Social Security Act (42 U.S.C. 1395mm) is amended to read as follows:

"(6)(A) If the Secretary determines that an eligible organization with a contract under this section—

"(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

"(ii) imposes premiums on individuals enrolled under this section in excess of the premiums permitted;

"(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section;

"(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this section) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

"(v) misrepresents or falsifies information that is furnished—
"(I) to the Secretary under this section, or
"(II) to an individual or to any other entity under this section; or
"(vi) fails to comply with the requirements of subsection (g)(6)(A);

the Secretary may provide for any of the remedies described in subparagraph (B).

"(B) The remedies described in this subparagraph are—
"(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A) or, with respect to a determination under clause (iv) or (v)(I), of not more than $100,000 for each such determination,
"(ii) suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or
"(iii) suspension of payment to the organization under this section for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as they apply to a civil money penalty under that section.".

SEC. 4015. MEDICARE PAYMENT DEMONSTRATION PROJECTS.

(a) MEDICARE INSURED GROUP DEMONSTRATION PROJECTS.—
(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") may provide for capitation demonstration projects (in this subsection referred to as "projects") with an entity which is an eligible organization with a contract with the Secretary under section 1876 of the Social Security Act or which meets the restrictions and requirements of this subsection. The Secretary may not approve a project unless it meets the requirements of this subsection.
(2) The Secretary may not conduct more than 3 projects and may not expend, from funds under title XVIII of the Social Security Act, more than $600,000,000 in any fiscal year for all such projects.
(3) The per capita rate of payment under a project—
(A) may be based on the adjusted average per capita cost (as defined in section 1876(a)(4) of the Social Security Act) determined only with respect to the group of individuals involved (rather than with respect to medicare beneficiaries generally), but
(B) the rate of payment may not exceed the lesser of—
(i) 95 percent of the adjusted average per capita cost described in subparagraph (A), or
(ii)(I) in the 4th year or 5th year of a project, 115 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) of such Act) for classes of individuals described in section 1876(a)(1)(B) of that Act, or

(II) in any subsequent year of a project, 95 percent of the adjusted average per capita cost (as defined in section 1876(a)(4)) for such classes.

(4) If the payment amounts made to a project are greater than the the costs of the project (as determined by the Secretary or, if applicable, on the basis of adjusted community rates described in section 1876(e)(3) of the Social Security Act), the project—

(A) may retain the surplus, but not to exceed 5 percent of the average adjusted per capita cost determined in accordance with paragraph (3)(A), and

(B) with respect to any additional surplus not retained by the project, shall apply such surplus to additional benefits for individuals served by the project or return such surplus to the Secretary.

(5) Enrollment under the project shall be voluntary. Individuals enrolled with the project may terminate such enrollment as of the beginning of the first calendar month following the date on which the request is made for such termination. Upon such termination, such individuals shall retain the same rights to other health benefits that such individuals would have had if they had never enrolled with the project without any exclusion or waiting period for pre-existing conditions.

(6) The requirements of—

(A) subsection (c)(3)(C) (relating to dissemination of information),

(B) subsection (c)(3)(E) (annual statement of rights),

(C) subsection (c)(5) (grievance procedures),

(D) subsection (c)(6) (on-going quality),

(E) subsection (g)(6) (relating to prompt payment of claims),

(F) subsection (i)(3)(A) and (B) (relating to access to information and termination notices),

(G) subsection (i)(6) (relating to providing necessary services), and

(H) subsection (i)(7) (relating to agreements with peer review organizations),

of section 1876 of the Social Security Act shall apply to a project in the same manner as they apply to eligible organizations with risk-sharing contracts under such section.

(7) The benefits provided under a project must be at least actuarially equivalent to the combination of the benefits available under title XVIII of the Social Security Act and the benefits available through any alternative plans in which the individual can enroll through the the employer. The project shall guarantee the actuarial value of benefits available under the employer plan for the duration of the project.

(8) A project shall comply with all applicable State laws.

(9) The Secretary may not authorize a project unless the entity offering the project demonstrates to the satisfaction of the Secretary that it has the necessary financial reserves to pay for any liability for benefits under the project (including those liabilities for health benefits under medicare and any supplemental benefits).

(10) The Comptroller General shall monitor projects under this subsection and shall report periodically (not less often than once every year) to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives on the status of such projects and the affect on such projects of the requirements of this section and shall submit a final report to each such committee on the results of such projects.

(b) PAYMENT METHODOLOGY REFORM DEMONSTRATIONS PROJECTS.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") is specifically authorized to conduct demonstration projects under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act, including—

(A) computing adjustments to the average per capita cost under section 1876 of such Act on the basis of health status or prior utilization of services, and

(B) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under such section which differs from payments currently provided on a county-by-county basis.

(2) No project may be conducted under this subsection—

(A) with an entity which is not an eligible organization (as defined in section 1876(b) of the Social Security Act), and

(B) unless the project meets all the requirements of subsections (c) and (i)(3) of section 1876 of such Act.

(3) There are authorized to be appropriated to carry out projects under this subsection $5,000,000 in each of fiscal years 1989 and 1990.

(c) APPLICATION OF PROVISIONS.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration projects under this section in the same manner as they apply to experiments under subsection (a)(1) of that section.

SEC. 4016. DELAY IN EFFECTIVE DATE IN PHYSICIAN INCENTIVE RULES FOR HEALTH MAINTENANCE ORGANIZATIONS.

Section 9313(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "April 1, 1989" and inserting "April 1, 1990".

SEC. 4017. GAO STUDY AND REPORTS ON MEDICARE CAPITATION.

(a) STUDY.—The Comptroller General shall conduct a study on medicare capitation rates that shall include an analysis and assessment of—

(1) the current method for computing per capita rates of payment under section 1876 of the Social Security Act (including the method for determining the United States per capita cost);

(2) the method for establishing relative costs for geographic areas and the data used to establish age, sex, and other weighting factors;

(3) ways to refine the calculation of adjusted average per capita costs under section 1876 of such Act (including making adjustments for health status or prior utilization of services and improvements in the definition of geographic areas);

(4) the extent to which individuals enrolled with organizations with a risk-sharing contract with the Secretary under section 1876 of such Act differ in utilization and cost from fee-for-service beneficiaries and ways for modifying enrollment patterns through program changes or for reflecting the differences in rates through group experience rating or other means;

(5) approaches for limiting the liability of the contracting organization under section 1876 of such Act in catastrophic cases;

(6) ways of establishing capitation rates on a basis other than fee-for-service experience in areas with high prepaid market penetration; and

(7) methods for providing the rate levels necessary to maintain access to quality prepaid services in rural or medically underserved areas (while maintaining cost savings).

(b) REPORTS.—

(1) Not later than January 1 of 1989 and 1990, the Comptroller General shall submit to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives interim reports on the progress of the study conducted under subsection (a).

(2) Not later than January 1, 1991, the Comptroller General shall submit to each such committee a final report on the results of such study.

SEC. 4018. SPECIAL RULES.

(a) ASSIGNMENT OF MEMBERS FOR HIP HEALTH MAINTENANCE ORGANIZATION.—Section 1876(f) of such Act (42 U.S.C. 1395mm(f)) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3)(A) An eligible organization described in subparagraph (B) may elect, for purposes of determining the compliance of a subdivision, subsidiary, or affiliate described in subparagraph (B)(iii) with the requirement of paragraph (1) for the period before October 1, 1992, to have members of the subdivision, subsidiary, or affiliate considered to be members of the parent organization.

"(B) An eligible organization described in this subparagraph is an eligible organization which—

"(i) is described in section 1903(m)(2)(B)(iii);

"(ii) has members who have a collectively bargained contractual right to obtain health benefits from the organization;

"(iii) elects to provide benefits under a risk-sharing contract to individuals residing in a service area, who have a collectively bargained contractual right to obtain benefits from the organization, through a subdivision, subsidiary, or affiliate which itself is an eligible organization serving the area and which is owned or controlled by the parent eligible organization; and

"(iv) has assumed any risk of insolvency and quality assurance with respect to individuals receiving benefits through such a subdivision, subsidiary, or affiliate.".

(b) EXTENSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.—

(1) The Secretary of Health and Human Services shall extend without interruption, through September 30, 1992, the approval of waivers granted under subsection (a) of section 2355 of the Deficit Reduction Act of 1984 for the demonstration project described in subsection (b) of that section, subject to the terms and conditions (other than duration of the project) established under that section (as amended by paragraph (2) of this subsection).

(2) Section 2355(b)(5) of the Deficit Reduction Act of 1984 is amended by inserting "and in succeeding years" after "third year".

(3) Section 2355(d)(2) of the Deficit Reduction Act of 1984 is amended by striking "final" and inserting "interim".

(4) The Secretary of Health and Human Services shall submit a final report to the Congress on the project referred to in paragraph (1) not later than March 31, 1993.

(c) TREATMENT OF MICHIGAN BLUE CARE HMO NETWORK UNDER 50 PERCENT RULE.—Blue Care, Inc., a nonprofit corporation which is indirectly owned and operated by Blue Cross and Blue Shield of Michigan, Inc. and which enrolls individuals for the purpose of providing them with health care services through assignment to health maintenance organizations which are indirectly or wholly owned and operated by Blue Cross and Blue Shield of Michigan, Inc., is deemed to meet the requirement of section 1876(f)(1) of the Social Security Act (relating to limitation on enrollment of medicare and medicaid beneficiaries with an eligible organization) if—

(1) such requirement would be met if applied to all individuals enrolled with (or otherwise assigned to) each of such health maintenance organizations, and

(2) not more than 20 percent of the number of individuals who are members of (or otherwise assigned to) each such organization consists of individuals who are entitled to benefits under title XVIII of the Social Security Act.

(d) TEMPORARY WAIVER FOR WATTS HEALTH FOUNDATION.—Section 9312(c)(3) of the Omnibus Budget Reconciliation Act of 1986 is amended by adding at the end the following new subparagraph:

"(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that is described in clauses (i) and (ii) of subparagraph (C) and that received a grant or grants totaling at least $3,000,000 in fiscal year 1987 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act—

"(i) before January 1, 1990, section 1876(f) of the Social Security Act shall not apply to the organization;

"(ii) beginning on January 1, 1990, the Secretary of Health and Human Services shall waive the requirement of such section with respect to the organization if—

"(I) before such date, the organization has submitted to the Secretary a schedule for the organization to comply with the requirement of section 1876(f)(1) of such Act, and the Secretary has found

such schedule to be reasonable and has approved such schedule; and

"(II) periodically after such date, the Secretary reviews the organization's compliance with such schedule and determines that the organization has complied, or made significant progress towards compliance, with such schedule; and

"(iii) after January 1, 1990, if the Secretary has approved a schedule under clause (ii)(I) and has determined, in a periodic review under clause (ii)(II), that the organization has not complied, or made significant progress towards compliance, with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.".

Subpart B—Home Health Quality

SEC. 4021. CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES.

(a) DEFINITION OF HOME HEALTH AGENCY.—Section 1861(o)(6) of the Social Security Act (42 U.S.C. 1395x(o)(6)) is amended by inserting "the conditions of participation specified in section 1891(a) and" after "meets".

(b) CONDITIONS OF PARTICIPATION.—Title XVIII of such Act is amended by adding at the end the following new section:

"CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES; HOME HEALTH QUALITY

"SEC. 1891. (a) The conditions of participation that a home health agency is required to meet under this subsection are as follows:

"(1) The agency protects and promotes the rights of each individual under its care, including each of the following rights:

"(A) The right to be fully informed in advance about the care and treatment to be provided by the agency, to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being, and (except with respect to an individual adjudged incompetent) to participate in planning care and treatment or changes in care or treatment.

"(B) The right to voice grievances with respect to treatment or care that is (or fails to be) furnished without discrimination or reprisal for voicing grievances.

"(C) The right to confidentiality of the clinical records described in section 1861(o)(3).

"(D) The right to have one's property treated with respect.

"(E) The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of—

"(i) all items and services furnished by (or under arrangements with) the agency for which payment may be made under this title,

"(ii) the coverage available for such items and services under this title, title XIX, and any other Federal program of which the agency is reasonably aware,

"(iii) any charges for items and services not covered under this title and any charges the individual may have to pay with respect to items and services furnished by (or under arrangements with) the agency, and

"(iv) any changes in the charges or items and services described in clause (i), (ii), or (iii).

"(F) The right to be fully informed in writing (in advance of coming under the care of the agency) of the individual's rights and obligations under this title.

"(G) The right to be informed of the availability of the State home health agency hot-line established under section 1864(a).

"(2) The agency notifies the State entity responsible for the licensing or certification of the agency of a change in—

"(A) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the agency,

"(B) the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the agency, and

"(C) the corporation, association, or other company responsible for the management of the agency.

Such notice shall be given at the time of the change and shall include the identity of each new person or company described in the previous sentence.

"(3)(A) The agency must not use as a home health aide (on a full-time, temporary, per diem, or other basis), any individual who is not a licensed health care professional (as defined in subparagraph (F)) to provide items or services described in section 1861(m) on or after January 1, 1990, unless the individual—

"(i) has completed a training and competency evaluation program, or a competency evaluation program, that meets the minimum standards established by the Secretary under subparagraph (D), and

"(ii) is competent to provide such items and services.

For purposes of clause (i), an individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of such a program, there has been a continuous period of 24 consecutive months during none of which the individual provided items and services described in section 1861(m) for compensation.

"(B)(i) The agency must provide, with respect to individuals used as a home health aide by the agency as of July 1, 1989, for a competency evaluation program (as described in subparagraph (A)(i)) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

"(ii) The agency must provide such regular performance review and regular in-service education as assures that individ-

uals used to provide items and services described in section 1861(m) are competent to provide those items and services.

"(C) The agency must not permit an individual, other than in a training and competency evaluation program that meets the minimum standards established by the Secretary under subparagraph (D), to provide items or services of a type for which the individual has not demonstrated competency.

"(D)(i) The Secretary shall establish minimum standards for the programs described in subparagraph (A) by not later than October 1, 1988.

"(ii) Such standards shall include the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determination of competency.

"(iii) Such standards may permit approval of programs offered by or in home health agencies, as well as outside agencies (including employee organizations), and of programs in effect on the date of the enactment of this section; except that they may not provide for the approval of a program offered by or in a home health agency which has been determined to be out of compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) within the previous 2 years.

"(iv) Such standards shall permit a determination that an individual who has completed (before July 1, 1989) a training and competency evaluation program or a competency evaluation program shall be deemed for purposes of subparagraph (A) to have completed a program that is approved by the Secretary under the standards established under this subparagraph if the Secretary determines that, at the time the program was offered, the program met such standards.

"(E) In this paragraph, the term 'home health aide' means any individual who provides the items and services described in section 1861(m), but does not include an individual—

"(i) who is a licensed health professional (as defined in subparagraph (F)), or

"(ii) who volunteers to provide such services without monetary compensation.

"(F) In this paragraph, the term 'licensed health professional' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

"(4) With respect to durable medical equipment furnished to individuals for whom the agency provides items and services, suppliers of such equipment do not use (on a full-time, temporary, per diem, or other basis) any individual who does not meet minimum training standards (established by the Secretary by October 1, 1988) for the demonstration and use of any such equipment furnished to individuals with respect to whom payments may be made under this title.

"(5) The agency includes an individual's plan of care required under section 1861(m) as part of the clinical records described in section 1861(o)(3).

"(6) The agency operates and provides services in compliance with all applicable Federal, State, and local laws and regula-

tions (including the requirements of section 1124) and with accepted professional standards and principles which apply to professionals providing items and services in such an agency.

"(b) It is the duty and responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1861(o) and subsection (a) of this section and the enforcement of such conditions and requirements are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient use of public moneys.".

(c) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by subsections (a) and (b) shall apply to home health agencies as of the first day of the 18th calendar month that begins after the date of the enactment of this Act.

SEC. 4022. STANDARD AND EXTENDED SURVEY.

(a) IN GENERAL.—Section 1891 of the Social Security Act (as added by section 4021) is amended by adding at the end the following new subsections:

"(c)(1) Any agreement entered into or renewed by the Secretary pursuant to section 1864 relating to home health agencies shall provide that the appropriate State or local agency shall conduct, without any prior notice, a standard survey of each home health agency. Any individual who notifies (or causes to be notified) a home health agency of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A. The Secretary shall review each State's or local agency's procedures for scheduling and conduct of standard surveys to assure that the State or agency has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(2)(A) Except as provided in subparagraph (B), each home health agency shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this paragraph. The Statewide average interval between standard surveys of any home health agency shall not exceed 12 months.

"(B) If not otherwise conducted under subparagraph (A), a standard survey (or an abbreviated standard survey) of an agency—

"(i) may be conducted within 2 months of any change of ownership, administration, or management of the agency to determine whether the change has resulted in any decline in the quality of care furnished by the agency, and

"(ii) shall be conducted within 2 months of when a significant number of complaints have been reported with respect to the agency to the Secretary, the State, the entity responsible for the licensing of the agency, the State or local agency responsible for maintaining a toll-free hotline and investigative unit (under section 1864(a)), or any other appropriate Federal, State, or local agency.

"(C) A standard survey conducted under this paragraph with respect to a home health agency—

"(i) shall include (to the extent practicable), for a case-mix stratified sample of individuals furnished items or services by the agency—

"(I) visits to the homes of such individuals, but only with the consent of such individuals, for the purpose of evaluating (in accordance with a standardized reproducible assessment instrument (or instruments) approved by the Secretary under subsection (d)) the extent to which the quality and scope of items and services furnished by the agency attained and maintained the highest practicable functional capacity of each such individual as reflected in such individual's written plan of care required under section 1861(m) and clinical records required under section 1861(o)(3); and

"(II) a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care;

"(ii) shall be based upon a protocol that is developed, tested, and validated by the Secretary not later than January 1, 1989; and

"(iii) shall be conducted by an individual—

"(I) who meets minimum qualifications established by the Secretary not later than July 1, 1989,

"(II) who is not serving (or has not served within the previous 2 years) as a member of the staff of, or as a consultant to, the home health agency surveyed respecting compliance with the conditions of participation specified in or pursuant to section 1861(o) or subsection (a) of this section, and

"(III) who has no personal or familial financial interest in the home health agency surveyed.

"(D) Each home health agency that is found, under a standard survey, to have provided substandard care shall be subject to an extended survey to review and identify the policies and procedures which produced such substandard care and to determine whether the agency has complied with the conditions of participation specified in or pursuant to section 1861(o) or subsection (a) of this section. Any other agency may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey). The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

"(E) Nothing in this paragraph shall be construed as requiring an extended (or partial extended) survey as a prerequisite to imposing a sanction against an agency under subsection (e) on the basis of the findings of a standard survey.

"(d)(1) Not later than January 1, 1989, the Secretary shall designate an assessment instrument (or instruments) for use by an agency in complying with subsection (c)(2)(C)(I).

"(2)(A) Not later than January 1, 1991, the Secretary shall—

"(i) evaluate the assessment process,

"(ii) report to Congress on the results of such evaluation, and

"(iii) based on such evaluation, make such modifications in the assessment process as the Secretary determines are appropriate.

"(B) The Secretary shall periodically update the evaluation conducted under subparagraph (A), report the results of such update to Congress, and, based on such update, make such modifications in the assessment process as the Secretary determines are appropriate.

"(3) The Secretary shall provide for the comprehensive training of State and Federal surveyors in matters relating to the performance of standard and extended surveys under this section, including the use of any assessment instrument (or instruments) designated under paragraph (1).".

(b) EFFECTIVE DATE.—Except as otherwise specifically provided in section 1891(d) of the Social Security Act (as added by subsection (a)), the amendment made by subsection (a) shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act.

SEC. 4023. ENFORCEMENT.

Section 1891 of the Social Security Act (as added by section 4021 and amended by section 4022) is further amended by adding at the end the following new subsections:

"(e)(1) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this title is no longer in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subsection (f)(2)(A)(iii) or terminate the certification of the agency, and may provide, in addition, for 1 or more of the other remedies described in subsection (f)(2)(A).

"(2) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this title is no longer in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) and determines that the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary may (for a period not to exceed 6 months) impose intermediate sanctions developed pursuant to subsection (f), in lieu of terminating the certification of the agency. If, after such a period of intermediate sanctions, the agency is still no longer in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a), the Secretary shall terminate the certification of the agency.

"(3) If the Secretary determines that a home health agency that is certified for participation under this title is in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subsection

(f)(2)(A)(i) for the days in which it finds that the agency was not in compliance with such requirements.

"(4) The Secretary may continue payments under this title with respect to a home health agency not in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) over a period of not longer than 6 months, if—

"(A) the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the agency with the requirements than to terminate the certification of the agency,

"(B) the agency has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(C) the agency agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by home health agencies under this subparagraph.

"(f)(1) The Secretary shall develop and implement, by not later than April 1, 1989—

"(A) a range of intermediate sanctions to apply to home health agencies under the conditions described in subsection (e), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) civil money penalties for each day of noncompliance,

"(ii) suspension of all or part of the payments to which a home health agency would otherwise be entitled under this title with respect to items and services furnished by a home health agency on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (e)(2), and

"(iii) the appointment of temporary management to oversee the operation of the home health agency and to protect and assure the health and safety of the individuals under the care of the agency while improvements are made in order to bring the agency into compliance with all the requirements specified in or pursuant to section 1861(o) or subsection (a).

The temporary management under clause (iii) shall not be terminated until the Secretary has determined that the agency has the management capability to ensure continued compliance with all the requirements referred to in that clause.

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.

"(C) A finding to suspend payment under subparagraph (A)(ii) shall terminate when the Secretary finds that the home health agency is in substantial compliance with all the requirements specified in or pursuant to section 1861(o) and subsection (a).

"(3) The Secretary shall develop and implement, by not later than April 1, 1989, specific procedures with respect to the conditions under which each of the intermediate sanctions developed under paragraph (1) is to be applied, including the amount of any fines and the severity of each of these sanctions. Such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(b) EFFECTIVE DATE.—Except as otherwise specifically provided in subsections (e) and (f) of section 1891 of the Social Security Act (as added by subsection (a)), the amendment made by subsection (a) shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act.

SEC. 4024. REQUIREMENT THAT INDIVIDUAL BE CONFINED TO HOME.

(a) PART A.—Section 1814(a) of the Social Security Act (42 U.S.C. 1395f(a)) is amended by adding at the end the following: "For purposes of paragraph (2)(C), an individual shall be considered to be 'confined to his home' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered 'confined to his home', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment.".

(b) PART B.—Section 1835(a) of such Act (42 U.S.C. 1395n(a)) is amended by adding at the end the following: "For purposes of paragraph (2)(A), an individual shall be considered to be 'confined to his home' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered 'confined to his home', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to items and services provided on or after January 1, 1988.

SEC. 4025. HOME HEALTH TOLL-FREE HOTLINE AND INVESTIGATIVE UNIT.

(a) IN GENERAL.—Section 1864(a) of the Social Security Act (42 U.S.C. 1395aa(a)) is amended by adding at the end the following:

"Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this title (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted with respect to the agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this title with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey and certification reports, information gathered by any private accreditation agency pursuant to an agreement with the Secretary under section 1864, and consumer medical records (but only with the consent of the consumer or his or her legal representative).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to agreements entered into or renewed on or after the date of enactment of this Act.

SEC. 4026. HOME HEALTH AGENCY COST LIMITS.

(a) DATA USED TO DETERMINE LIMITS.—

(1) Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) is amended by adding at the end the following new clause:

"(iii) In establishing limits under this subparagraph, the Secretary shall—

"(I) utilize a wage index that is based on audited wage data obtained from home health agencies, and

"(II) base such limits on the most recent audited wage data available, which data may be for cost reporting periods beginning no earlier than July 1, 1985.".

(2) The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after July 1, 1988.

(b) STUDY OF LIMITS.—The Secretary of Health and Human Services shall study and report to the Congress, not later than June 1, 1988, on—

(1) whether the separate schedules of cost limits currently applied to home health agencies under title XVIII of the Social Security Act located in urban and rural areas accurately reflect differences in the costs of urban and rural home health agencies, and

(2) the appropriateness of modifying such limits to take into account the proportion of agency patients who are from urban and rural areas.

SEC. 4027. HOME HEALTH PROSPECTIVE PAYMENT DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the medicare and medicaid programs. The project

shall be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to, and quality of, home health care, and home health agency operations. The Secretary shall assure that services are first furnished under the project not later than July 1, 1988, and, for this purpose, the Secretary may reinstate a previously awarded contract, or award a sole source contract, to carry out the project.

(b) FUNDING.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration project under subsection (a) of this section as they apply to experiments under subsection (a)(1) of that section.

(c) REPORT.—The Secretary shall submit to Congress, not later than one year after the date of the enactment of this Act, an interim report on the demonstration project and, not later than four years after the date of the enactment of this Act, a final report on the results of the project.

Subpart C—Other Provisions

SEC. 4031. PAYMENT CYCLE STANDARDS.

(a) PAYMENT FLOOR STANDARDS.—

(1) Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended by adding at the end the following new paragraph:

"(3)(A) Each agreement under this section shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this title within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means—

"(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

"(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.

(2) Section 1842(c) of such Act (42 U.S.C. 1395u(c)) is amended by adding at the end the following new paragraph:

"(3)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this title within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means—

"(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

"(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.

(3)(A) The amendments made by paragraphs (1) and (2) shall apply to claims received on or after July 1, 1988.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this subsection on a timely basis.

(b) PROHIBITION OF OTHER POLICIES INTENDED TO SLOW DOWN MEDICARE PAYMENTS.—Notwithstanding any other provision of law, except as specifically provided in this section, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, and before October 1, 1990, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under title XVIII of the Social Security Act.

(c) BUDGET CONSIDERATIONS.—For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this section is a necessary (but secondary) result of a significant policy change.

SEC. 4032. DENIALS AND RECONSIDERATIONS OF CLAIMS FOR HOME HEALTH SERVICES, EXTENDED CARE SERVICES, AND POST-HOSPITAL EXTENDED CARE SERVICES.

(a) NOTIFICATION AND PHYSICIAN REVIEW.—Section 1816 of the Social Security Act (42 U.S.C. 1395h) is amended by adding at the end the following new subsection:

"(j) An agreement with an agency or organization under this section shall require that, with respect to a claim for home health services, extended care services, or post-hospital extended care services submitted by a provider to such agency or organization that is denied, such agency or organization—

"(1) furnish the provider and the individual with respect to whom the claim is made with a written explanation of the denial and of the statutory or regulatory basis for the denial; and

"(2) promptly notify such individual and the provider of disposition of such reconsideration.".

(b) PERFORMANCE STANDARDS FOR FISCAL INTERMEDIARIES AND CARRIERS.—Section 1816(f) of such Act (42 U.S.C. 1395h(f)) is amended by adding at the end the following: "Such standards and criteria shall include with respect to claims for services furnished under this part by any provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.".

(c) EFFECTIVE DATE.—

(1)(A) The amendment made by subsection (a) shall apply with respect to claims received on or after January 1, 1988.

(B) The amendment made by subsection (b) shall apply with respect to claims filed on or after October 1, 1988.

(2) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section

1816 and contracts under section 1842 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendments made by subsections (a) and (b) on a timely basis.

SEC. 4033. PERMITTING DISABLED INDIVIDUALS TO RENEW ENTITLEMENT TO MEDICARE AFTER GAINFUL EMPLOYMENT WITHOUT A 2-YEAR WAITING PERIOD.

(a) IN GENERAL.—

(1) Section 226(f) of the Social Security Act (42 U.S.C. 426(f)) is amended by inserting before the period at the end the following: ", unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period".

(2)(A) The amendment made by subsection (a) shall apply to months beginning after the end of the 60-day period beginning on the date of enactment of this Act.

(B) The amendment made by subsection (a) shall not apply so as to include (for the purposes described in section 226(f) of the Social Security Act) monthly benefits paid for any month in a previous period (described in that section) that terminated before the end of the 60-day period described in paragraph (1).

SEC. 4034. APPLICATION OF SECONDARY PAYER PROVISIONS TO GOVERNMENTAL ENTITIES.

(a) IN GENERAL.—Section 1862(b)(4)(B)(i) of the Social Security Act (42 U.S.C. 1395y(b)(4)(B)(i)), as added by the amendment made by section 9319(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "section 5000(b) of the Internal Revenue Code of 1986" and inserting "subsection (b) of section 5000 of the Internal Revenue Code of 1986 without regard to subsection (d) of such section".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of section 9319(a) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4035. PUBLICATION AND NOTIFICATION OF POLICIES.

(a) REQUIRING PUBLICATION OF INTERMEDIARY AND CARRIER BUDGET METHODOLOGY.—

(1) Section 1816(c)(1) of the Social Security Act (42 U.S.C. 1395h(c)(1)) is amended by adding at the end the following sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.".

(2) Section 1842(c)(1) of such Act (42 U.S.C. 1395u(c)(1)) is amended by adding at the end the following sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for that fiscal year, and shall cause to be

published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.".

(3) The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to budgets for fiscal years beginning with fiscal year 1989.

(b) PUBLICATION AS REGULATIONS OF SIGNIFICANT POLICIES.—Section 1871(a) of such Act (42 U.S.C. 1395hh(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

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

"(2) No rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under this title shall take effect unless it is promulgated by the Secretary by regulation under paragraph (1).".

(c) MISCELLANEOUS PUBLICATION AND INFORMATION ACCESS PROVISIONS.—Section 1871 of such Act (42 U.S.C. 1395hh) is amended by adding at the end the following new subsection:

"(c)(1) The Secretary shall publish in the Federal Register, not less frequently than every 3 months, a list of all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability which—

"(A) are promulgated to carry out this title, but

"(B) are not published pursuant to subsection (a)(1) and have not been previously published in a list under this subsection.

"(2) Effective June 1, 1988, each fiscal intermediary and carrier administering claims for extended care, post-hospital extended care, home health care, and durable medical equipment benefits under this title shall make available to the public all interpretative materials, guidelines, and clarifications of policies which relate to payments for such benefits.

"(3) The Secretary shall to the extent feasible make such changes in automated data collection and retrieval by the Secretary and fiscal intermediaries with agreements under section 1816 as are necessary to make easily accessible for the Secretary and other appropriate parties a data base which fairly and accurately reflects the provision of extended care, post-hospital extended care and home health care benefits pursuant to this title, including such categories as benefit denials, results of appeals, and other relevant factors, and selectable by such categories and by fiscal intermediary, service provider, and region.".

SEC. 4036. END-STAGE RENAL DISEASE AMENDMENTS.

(a) IMPLEMENTATION OF PRIMARY PAYER REQUIREMENTS FOR END-STAGE RENAL DISEASE PROGRAM.—

(1) Section 1862(b)(2)(A) of the Social Security Act (42 U.S.C. 1395y(b)(2)(A)) is amended by striking "(ii)" and all that follows through "under this title" and inserting "(ii) can reasonably be expected to be made under such a plan".

(2) The amendment made by paragraph (1) shall apply with respect to items and services furnished on or after 30 days after the date of the enactment of this Act.

(b) LIMITATION OF MINIMUM UTILIZATION RATE REQUIREMENT FOR END-STAGE RENAL DISEASE TRANSPLANTATIONS.—The last sentence of section 1881(b)(1) of such Act (42 U.S.C. 1395rr(b)(1)) is amended by striking "covered procedures and for self-dialysis training programs" and inserting "transplantations".

(c) EXTENSION OF DEADLINE FOR ESTABLISHING PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES AS IT RELATES TO THE REUSE OF BLOODLINES.—

(1)(A) Section 9335(k)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by inserting "(or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines)" after "October 1, 1987".

(B) The amendment made by subparagraph (A) shall be effective as if included in the enactment of section 9335(k)(2) of the Omnibus Budget Reconciliation Act of 1986.

(2) Section 1881(f)(7)(B) of the Social Security Act (42 U.S.C. 1395rr(f)(7)(B)) is amended by inserting "(or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines)" after "January 1, 1988".

(d) STUDIES OF END-STAGE RENAL DISEASE PROGRAM.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall arrange for a study of the end-stage renal disease program within the medicare program.

(2) Among other items, the study shall address—

(A) access to treatment by both individuals eligible for medicare benefits and those not eligible for such benefits;

(B) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction;

(C) the effect of reimbursement on quality of treatment;

(D) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and

(E) the adequacy of existing data systems to monitor these matters on a continuing basis.

(3) The Secretary shall submit to Congress, not later than 3 years after the date of the enactment of this Act, a report on the study.

(4) The Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(5) Section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended—

(A) in subsection (c)(2)(F), by striking "and subsection (g)",

(B) by striking the last sentence of subsection (c)(6),

(C) by striking subsection (g), and

(D) by redesignating subsection (h), as added by section 20 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), as subsection (g).

SEC. 4037. MEDICARE HEARINGS AND APPEALS.

(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act prior to the earliest of the date on which the Secretary of Health and Human Services submits the report required to be submitted by the Secretary under subsection (b)(1) or September 1 shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 205(b)(1) of such Act.

(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

(1) The Secretary of Health and Human Services and the Comptroller General of the United States shall each conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act by telephone and shall each report the results of the study not later than 6 months after the date of enactment of this Act.

(2) The studies under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).

SEC. 4038. RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with four sponsoring hospitals submitting applications under this subsection to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

(b) NATURE OF PROJECT.—Under a demonstration project conducted under subsection (a), a sponsoring hospital entering into an agreement with the Secretary under such subsection shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under subsection (a) may provide) who have completed one year of residency training.

(c) SELECTION.—In selecting from among applications submitted under subsection (a), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

(1) two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is east of the Mississippi River and one of which is west of such river); and

(2) two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

(d) CLARIFICATION OF PAYMENT.—For purposes of section 1886 of the Social Security Act—

(1) with respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under subsection (a) for any part of a year shall be treated as if he or she were working at the appropriate sponsoring hospital with an agreement under subsection (a) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

(2) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under subsection (a) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under subsection (a).

(e) DURATION OF PROJECT.—Each demonstration project under subsection (a) shall be commenced not later than six months after the date of enactment of this Act and shall be conducted for a period of three years.

(f) DEFINITION.—In this section, the term "sponsoring hospital" means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act.

SEC. 4039. MISCELLANEOUS AND TECHNICAL PROVISIONS.

(a) CLARIFICATION OF CRIMINAL PENALTIES FOR WILLFUL MISREPRESENTATIONS.—Subsection (c) of section 1128B of the Social Security Act (42 U.S.C. 1320a–7b)), as redesignated by section 4(d) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100–93), is amended—

(1) by striking "institution or facility" each place it appears and inserting "institution, facility, or entity", and

(2) by inserting "(including an eligible organization under section 1876(b))" after "other entity".

(b) PODIATRISTS.—

(1) Section 1861(r)(3) of the Social Security Act (42 U.S.C. 1395x(r)(3)) is amended—

(A) by striking "subsection (s) of this section" and inserting "subsections (k), (m), (p)(1), and (s) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835", and

(B) by striking "; and for the purposes" and all that follows through "which he is legally authorized to perform".

(2) Section 1861(b)(6) of such Act (42 U.S.C. 1395x(b)(6)) is amended by striking "Council on Podiatry Education of the American Podiatry Association" and inserting "Council on Podiatric Medical Education of the American Podiatric Medical Association".

(c) RECOVERY OF PAYMENTS FOR CERTAIN PACEMAKER DEVICES.—

(1) Section 1862(h) of such Act (42 U.S.C. 1395y(h)) is amended—

(A) in paragraph (1)(B), by striking "law," and inserting "law (and any amount paid to a provider under any such warranty),";

(B) in paragraph (1)(D), by striking "(3)," and inserting "(3), in determining the amount subject to repayment under paragraph (2)(C),";

(C) in paragraph (2)—

(i) by striking "and" at the end of subparagraph (A),

(ii) by striking the period at the end of subparagraph (B) and inserting ", and", and

(iii) by adding at the end the following new subparagraph:

"(C) to make repayment to the Secretary of amounts paid under this title to the provider with respect to any cardiac pacemaker device or lead which has been replaced by the manufacturer, or for which the manufacturer has made payment to the provider, under an express or implied warranty."; and

(D) in paragraph (4)(B)—

(i) by striking "or has" and inserting ", has", and

(ii) by striking "(2)(B)," and inserting "(2)(B), or has failed to make repayment to the Secretary as required under paragraph (2)(C),".

(2) The amendments made by paragraph (1) shall become effective on January 1, 1988.

(d) EXTEND AND CLARIFY PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before October 15, 1988, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1989 of more than $50,000,000.

(e) MORATORIUM ON PRIOR AUTHORIZATION FOR HOME HEALTH AND POST-HOSPITAL EXTENDED CARE SERVICES.—The Secretary of Health and Human Services shall not implement any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act at any time prior to six months after the date on which the Congress receives the report required under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986.

(f) DELAY IN PUBLISHING REGULATIONS WITH RESPECT TO DEEMING THE STATUS OF ENTITIES.—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall not deem any entity to be a provider of services (as defined in section 1861(u) of the Social Security Act) for purposes of title XVIII of such Act—

(1) on any date prior to 6 months after the date on which the Secretary has published a proposed rule with respect to the deeming of the entity, and

(2) until the Secretary publishes a final rule with respect to the deeming of the entity.

(g) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle and the amendments made by this subtitle.

PART 3—RELATING TO PART B

Subpart A—Provisions Relating to Payments for Physicians' Services

SEC. 4041. FREEZE IN PAYMENTS FOR PHYSICIANS' SERVICES; EXTENSION OF SEQUESTER ORDER.

(a) THREE-MONTH FREEZE ON INCREASES IN PHYSICIAN PAYMENTS.—

(1) IN GENERAL.—Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended—

(A) in subsection (b)(4)—

(i) in subparagraph (A), by redesignating clause (v) as clause (vi) and by inserting after clause (iv) the following new clause:

"(v) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning January 1, 1987.", and

(ii) in subparagraph (B), by adding at the end the following new clause:

"(iii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987."; and

(B) in subsection (j)(1)(C), by adding at the end thereof the following new clause:

"(vii) Notwithstanding any other provision of this subparagraph, the maximum allowable actual charge for a particular physicians' service furnished by a nonparticipating physician to individuals enrolled under this part during the 3-month period beginning on January 1, 1988, shall be the amount determined under this subparagraph for 1987. The maximum allowable actual charge for any such service otherwise determined under this subparagraph for 1988 shall take effect on April 1, 1988.".

(2) EXTENSION OF PHYSICIAN PARTICIPATION AGREEMENTS AND RELATED PROVISIONS.—Notwithstanding any other provision of law—

(A) subject to the last sentence of this paragraph, each agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall remain in effect for the three-month period beginning on January 1, 1988;

(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988, and the Secretary shall provide an opportunity for physicians to enroll as participating physicians prior to April 1, 1988;

(C) instead of publishing, under section 1842(h)(4) of the Social Security Act at the beginning of 1988, directories of participating physicians for 1988, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1988, of such directories of participating physicians for such period; and

(D) instead of providing to nonparticipating physicians, under section 1842(b)(3)(G) of the Social Security Act at the beginning of 1988, a list of maximum allowable actual charges for 1988, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1988, to such physicians such a list for such 9-month period.

An agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician requests on or before December 31, 1987, that the agreement be terminated.

(3)(A) Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended—

(i) in subsection (b)(2), by adding at the end the following: "In establishing such standards and criteria, the Secretary shall provide a system to measure a carrier's performance of responsibilities described in paragraph (3)(H) and subsection (h).''; and

(ii) in subsection (c)(1), by inserting "(A)" after "(c)(1)" and by adding at the end the following new subparagraph:

"(B) Of the amounts appropriated for administrative activities to carry out this part, the Secretary shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under this section, to reward carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians or in increasing the proportion of total payments for physicians' services which are payments for such services rendered by participating physicians.''.

(B) Section 9332(a) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(i) by striking paragraphs (2) and (3),

(ii) in paragraph (4)(B), by striking "under paragraph (2)" and inserting "under the last sentence of section 1842(b)(2) of the Social Security Act", and

(iii) in paragraph (4)(C)—

(I) by striking "under paragraph (3)" and inserting "under section 1842(c)(1)(B) of the Social Security Act",

(II) by striking "April" and inserting "July", and

(III) by striking "at the end of 1987" and inserting "before April 1, 1988".

(b) EXTENSION OF REDUCTION UNDER SEQUESTER ORDER.—Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required

under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1988, with respect to payments for physicians' services under part B of such title.

SEC. 4042. GENERAL UPDATE IN PAYMENTS FOR PHYSICIANS' SERVICES.

(a) INCREASE IN MEI FOR 1988 AND 1989.—Section 1842(b)(4) of the Social Security Act (42 U.S.C. 1395u(b)(4)) is amended by adding at the end the following new subparagraph:

"(F)(i) For purposes of this part for physicians' services furnished in 1987, the percentage increase in the MEI is 3.2 percent.

"(ii) For purposes of this part for physicians' services furnished in 1988, on or after April 1, the percentage increase in the MEI is—

"(I) 3.6 percent for primary care services (as defined in subparagraph (E)(iii)), and

"(II) 1 percent for other physicians' services.

"(iii) For purposes of this part for physicians' services furnished in 1989, the percentage increase in the MEI is—

"(I) 3.0 percent for primary care services; and

"(II) 1 percent for other physician's services.".

(b) PRIMARY CARE SERVICES DEFINED.—Section 1842(b)(4)(E) of such Act (42 U.S.C. 1395u(b)(4)(E)) is amended by adding at the end thereof the following new clause:

"(iii) The term 'primary care services' means physicians' services which constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services.".

(c) PARTICIPATING PHYSICIAN DIFFERENTIAL.—Section 1842(b)(4)(A)(iv) of such Act (42 U.S.C. 1395u(b)(4)(A)(iv)) is amended—

(1) by striking "96 percent" and inserting "applicable percent", and

(2) by adding at the end the following: "In the previous sentence, the term 'applicable percent' means for services furnished (I) on or after January 1, 1987, and before April 1, 1988, 96 percent, (II) on or after April 1, 1988, and before January 1, 1988, 95.5 percent, and (III) on or after January 1, 1989, 95 percent.".

SEC. 4043. INCENTIVE PAYMENTS FOR PHYSICIANS' SERVICES FURNISHED IN UNDERSERVED AREAS.

(a) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(m) In the case of physicians' services furnished to an individual, who is covered under the insurance program established by this part and who incurs expenses for such services, in an area that is designated (under section 332(a)(1)(A) of the Public Health Service Act) as a class 1 or class 2 health manpower shortage area, in addition to the amount otherwise paid under this part, there also shall be paid to the physician (or to an employer or facility in the cases

described in clause (A) of section 1842(b)(6)) (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 5 percent of the payment amount for the service under this part.".

(b) STUDY.—The Secretary of Health and Human Services shall study and report to Congress, by not later than January 1, 1990, on the feasibility of making additional payments described in section 1833(m) of the Social Security Act with respect to physician services which are performed in health manpower shortage areas located in urban areas.

(c) EFFECTIVE DATE.—The amendments made by this subsection (a) shall apply with respect to services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act)) on or after January 1, 1989, and to other services furnished on or after January 1, 1991.

SEC. 4044. ADJUSTMENT IN PREVAILING CHARGE LEVEL FOR PRIMARY CARE SERVICES.

(a) INCREASE IN PREVAILING CHARGES FOR PRIMARY CARE SERVICES.—Section 1842(b)(4)(A) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)), as amended by section 4041(a)(1) of this subtitle, is further amended by redesignating clause (vi) as clause (vii) and by inserting after clause (v) the following new clause:

"(vi) Before each year (beginning with 1989), the Secretary shall establish a prevailing charge floor for primary care services (as defined in subparagraph (E)(iii)) equal to 50 percent of the average of the prevailing charge levels (determined, for participating physicians under the third and fourth sentences of paragraph (3) and under paragraph (4), without regard to this clause and without regard to physician specialty) for such service for all localities in the United States (weighted by the relative frequency of the service in each locality) for the year.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payment for physicians' services furnished on or after January 1, 1989.

SEC. 4045. REDUCTION IN PREVAILING CHARGE LEVEL FOR OVERPRICED PROCEDURES.

(a) IN GENERAL.—Paragraph (10) of section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended to read as follows:

"(10)(A)(i) In determining the reasonable charge under paragraph (3) for procedures described in subparagraph (C) and performed during the 9-month period beginning on April 1, 1988, the prevailing charge for such procedure for participating and nonparticipating physicians shall be the prevailing charge otherwise recognized for such procedure for 1987—

"(I) subject to clause (iii), reduced by 2.0 percent, and

"(II) further reduced by the applicable percentage specified in clause (ii).

"(ii) For purposes of clause (i), the applicable percentage specified in this clause is—

"(I) 15 percent, in the case of a prevailing charge otherwise recognized (without regard to this paragraph and determined without regard to physician specialty) that is at least 150 percent of the weighted national average (as determined by the Sec-

retary) of such prevailing charges for such procedure for all localities in the United States for 1987;

"(II) 0 percent, in the case of a prevailing charge that does not exceed 85 percent of such weighted national average; and

"(III) in the case of any other prevailing charge, a percent determined on the basis of a straight-line sliding scale, equal to 3/13 of a percentage point for each percent by which the prevailing charge exceeds 85 percent of such weighted national average.

"(iii) In no case shall the reduction under clause (i) for a procedure result in a prevailing charge in a locality for 1988 which is less than 85 percent of the Secretary's estimate of the weighted national average of such prevailing charges for such procedure for all localities in the United States for 1987 (based upon the best available data and determined without regard to physician specialty) after making the reduction described in clause (i)(II).

"(B) The procedures described in this subparagraph are as follows: bronchoscopy, carpal tunnel repair, cataract surgery, coronary artery bypass surgery, diagnostic and/or therapeutic dilation and curettage, knee arthroscopy, knee arthroplasty, pacemaker implantation surgery, total hip replacement, suprapubic prostatectomy, transurethral resection of the prostate, and upper gastrointestinal endoscopy.

"(C) In the case of a reduction in the reasonable charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D).

"(D) There shall be no administrative or judicial review section 1869 or otherwise of any determination under subparagraph (A) or under paragraph (11)(B)(ii).".

(b) MODIFICATION OF GEOGRAPHIC INDEX.—Section 1845(e)(4)(A)(i) of such Act (42 U.S.C. 1395w-1(e)(4)(A)(i)) is amended by inserting "and costs of living" after "costs of practice".

(c) CONSOLIDATED CHARGE LIMITATION PROVISIONS.—

(1) PENALTIES FOR EXCESS CHARGES.—Section 1842 of such Act is further amended—

(A) in subsection (b)(11)(C)—

(i) in clause (i), by striking "(subject to clause (iv))" and all that follows through the end and inserting the following: ", the physician's actual charge is subject to a limit under subsection (j)(1)(D).";

(ii) in clause (i), by striking "(i)" after "(C)"; and

(iii) by striking clauses (ii) through (iv); and

(B) in subsection (j)(1), by adding at the end the following new subparagraph:

"(D)(i) If an action described in clause (ii) results in a reduction in a reasonable charge for a physicians' service or item and a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such action, the physician may not charge the individual more than 125 percent of the reduced payment allowance (as defined in clause (iii)) plus (for services or items furnished during the 12-month period (or 9-month period in the case of an action described in

clause (ii)(II)) beginning on the effective date of the action) ½ of the amount by which the physician's maximum allowable actual charge for the service or item for the previous 12-month period exceeds such 125 percent level.

"(ii) The first sentence of clause (i) shall apply to—

"(I) an adjustment under subsection (b)(8)(B) (relating to inherent reasonableness),

"(II) a reduction under subsection (b)(10)(A) (relating to certain overpriced procedures),

"(III) a reduction under subsection (b)(11)(B) (relating to certain cataract procedures), and

"(IV) an adjustment under section 1833(l)(3)(B) (relating to physician supervision of certified registered nurse anesthetists).

"(iii) In clause (i), the term 'reduced payment allowance' means, with respect to an action—

"(I) under subsection (b)(8)(B), the inherently reasonable charge established under subsection (b)(8); or

"(II) under subsection (b)(10)(A) or (b)(11)(B) or under section 1833(l)(3)(B), the prevailing charge for the service after the action.

"(iv) If a physician knowingly and willfully imposes a charge in violation of clause (i) (whether or not such charge violates subparagraph (B)), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(v) Clause (i) shall not apply to items and services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.".

(2) CONFORMING AMENDMENTS.—(A) Section 1833(l)(6) of such Act (42 U.S.C. 1395l(l)(6)) is amended—

(i) in subparagraph (A), by striking "(subject to subparagraph (D))" and all that follows through the end and inserting the following: "after the effective date of the reduction, the physician's actual charge is subject to a limit under section 1842(j)(1)(D).";

(ii) in subparagraph (A), by striking "(A)" after "(6)"; and

(iii) by striking subparagraphs (B) through (D).

(B) Section 1842(b)(11)(B)(i) of such Act (42 U.S.C. 1395u(b)(11)(B)(i)) is amended by striking "and shall be further reduced" and all that follows through "1988".

(C) Section 9334(b)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "1842(b)(10)" and inserting "1842(j)(1)(D)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after April 1, 1988, except the amendment made by subsection (c)(2)(B) shall apply to services furnished on or after January 1, 1988.

SEC. 4046. LIMITS ON PAYMENT FOR OPHTHALMIC ULTRASOUND.

(a) IN GENERAL.—Section 1842 of the Social Security Act (42 U.S.C. 1395u), as previously amended by this subpart is amended—

(1) in subsection (b)(11)—

(A) in subparagraph (C), as redesignated under section 4045(c)(1)(A)(ii) of this title, by inserting "or (C)" after "subparagraph (B)";

(B) by redesignating subparagraph (C) as subparagraph (D); and

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

"(C) The prevailing charge level determined with respect to A-mode ophthalmic ultrasound procedures may not exceed 5 percent of the prevailing charge level established with respect to extracapsular cataract removal with lens implantation."; and

(2) in subparagraph (D) of subsection (j)(1), as added by section 4045(c)(1)(B) of this subtitle—

(A) in clause (ii), by striking "and" at the end of subclause (III), by redesignating subclause (IV) as subclause (V) and by inserting before such subclause the following new subclause:

"(IV) a prevailing charge limit is established under subsection (b)(11)(C)(i), and"; and

(B) in clause (iii)(II), by striking "or (b)(11)(B)" and inserting ", (b)(11)(B), or (b)(11)(C)(i)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after April 1, 1988.

SEC. 4047. CUSTOMARY CHARGES FOR PRIMARY CARE SERVICES OF NEW PHYSICIANS.

(a) IN GENERAL.—Section 1842(b)(4) of the Social Security Act, as amended by section 4042(a), is further amended by adding at the end thereof the following new subparagraph:

"(G) In determining the customary charges for physicians' services (other primary care services and other than services furnished in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area) for which adequate actual charge data are not available because a physician has not yet been in practice for a sufficient period of time, the Secretary shall set a customary charge at a level no higher than 80 percent of the prevailing charge (as determined under the third and fourth sentences of paragraph (3) and under paragraph (4)) for a service.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to physicians who first furnish services to medicare beneficiaries after April 1, 1988.

SEC. 4048. PAYMENT FOR PHYSICIAN ANESTHESIA SERVICES.

(a) IN GENERAL.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is further amended by adding at the end the following new paragraph:

"(14)(A) In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after April 1, 1988, and before January 1, 1991, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent procedure (other than cataract surgery or an iridectomy) shall be reduced by—

"(i) 10 percent, in the case of medical direction of 2 nurse anesthetists concurrently,

"(ii) 25 percent, in the case of medical direction of 3 nurse anesthetists concurrently, and

"(iii) 40 percent, in the case of medical direction of 4 nurse anesthetists concurrently.

"(B) In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after January 1, 1989, and before January 1, 1991, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent cataract surgery or iridectomy procedure shall be reduced by 10 percent.

"(C) The Secretary shall require claims for physicians' services for medical direction of nurse anesthetists during the periods in which the provisions of subparagraph (A) or (B) apply to indicate the number of such anesthetists being medically directed concurrently at any time during the procedure, the name of each nurse anesthetist being directed, and the type of procedure for which the services are provided.".

(b) DEVELOPMENT OF UNIFORM RELATIVE VALUE GUIDE.—The Secretary of Health and Human Services, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under part B of title XVIII of the Social Security Act on and after January 1, 1989. Such guide shall be designed so as to result in expenditures under such title for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

(c) STUDY OF PREVAILING CHARGES FOR ANESTHESIA SERVICES.—The Secretary of Health and Human Services shall conduct a study of the variations in conversion factors used by carriers under section 1842(b) of the Social Security Act to determine the prevailing charge for anesthesia services and shall report the results of the study and make recommendations for appropriate adjustments in such factors not later than January 1, 1989.

(d) GAO STUDIES.—(1) The Comptroller General shall conduct a study—

(A) to determine the average anesthesia times reported for medicare reimbursement purposes,

(B) to verify those times from patient medical records,

(C) to compare anesthesia times to average surgical times, and

(D) to determine whether the current payments for physician supervision of nurse anesthetists are excessive.

The Comptroller General shall report to Congress, by not later than January 1, 1989, on such study and in the report include recommendations regarding the appropriateness of the anesthesia times recognized by medicare for reimbursement purposes and recommendations regarding adjustments of payments for physician supervision of nurse anesthetists.

(2) The Comptroller General shall conduct a study on the impact of the amendment made by subsection (a), and shall report to Congress on the results of such study by April 1, 1990.

SEC. 4049. FEE SCHEDULES FOR RADIOLOGIST SERVICES.

(a) IN GENERAL.—Part B of title XVIII of the Social Security Act is amended—

(1) in section 1833(a)(1) (42 U.S.C. 1395l(a)(1)), as amended by section 4062(c)(3) of this subtitle by striking "and" before "(I)", and by adding at the end the following new clause: "and (J) with respect to expenses incurred for radiologist services (as defined in section 1834(b)(5)), the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount provided under the fee schedule established under section 1834(b),"; and

(2) by adding at the end of section 1834, as subsequently inserted by section 4062(a) of this subtitle, the following new subsection:

"(b) FEE SCHEDULES FOR RADIOLOGIST SERVICES.—

"(1) DEVELOPMENT.—The Secretary shall develop—

"(A) a relative value scale to serve as the basis for the payment for radiologist services under this part, and

"(B) using such scale and appropriate conversion factors, fee schedules (on a regional, statewide, or carrier service area basis) for payment for radiologist services under this part, to be implemented for such services furnished during 1989.

"(2) CONSULTATION.—In carrying out paragraph (1), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the American College of Radiology, and other organizations representing physicians or suppliers who furnish radiologist services and shall share with them the data and data analysis being used to make the determinations under paragraph (1), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

"(3) CONSIDERATIONS.—In developing the relative value scale and fee schedules under paragraph (1), the Secretary—

"(A) shall take into consideration variations in the cost of furnishing such services among geographic areas and among different sites where services are furnished, and

"(B) may also take into consideration such other factors respecting the manner in which physicians in different specialties furnish such services as may be appropriate to assure that payment amounts are equitable and designed to promote effective and efficient provision of radiologist services by physicians in the different specialties.

"(4) SAVINGS.—

"(A) BUDGET NEUTRAL FEE SCHEDULES.—The Secretary shall develop preliminary fee schedules for 1989, which are designed to result in the same amount of aggregate payments (net of any insurance and deductibles under section 1835(a)(1)(I) and 1833(b)) for radiologist services furnished in 1989 as would have been made if this subsection had not been enacted.

"(B) INITIAL SAVINGS.—The fee schedules established for payment purposes under this subsection for services furnished in 1989 shall be 97 percent of the amounts permited

under this preliminary fee schedules developed under subparagraph (A).

"(C) SUBSEQUENT UPDATING.—Radiologist services furnished in subsequent years, the fee schedules shall be the schedules for the previous year updated by the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii)) for the year.

"(C) NONPARTICIPATING PHYSICIANS.—Each fee schedule so established shall provide that the payment rate recognized for nonparticipating physicians and suppliers is equal to the appropriate percent (as defined in section 1842(b)(4)(A)(iv)) of the payment rate recognized for participating physicians and suppliers.

"(5) LIMITING CHARGES OF NONPARTICIPATING PHYSICIANS.—

"(A) IN GENERAL.—In the case of radiologist services furnished after January 1, 1989, for which payment is made under a fee schedule under this subsection, if a nonparticipating physician or supplier furnishes the service to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B)).

"(B) LIMITING CHARGE DEFINED.—In subparagraph (A), the term 'limiting charge' means, with respect to a service furnished—

"(i) in 1989, 125 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1),

"(ii) in 1990, 120 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1), and

"(iii) after 1990, 115 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1).

"(C) ENFORCEMENT.—If a physician or supplier knowingly and willfully imposes a charge in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).

"(5) RADIOLOGIST SERVICES DEFINED.—For the purposes of this subsection, section 1833(a)(1)(I), and section 1842(h)(1)(B), the term 'radiologist services' only includes radiologic services performed by, or under the direction or supervision of, a physician—

"(A) who is certified, or eligible to be certified, by the American Board of Radiology, or

"(B) for whom radiologic services account for at least 50 percent of billings made under this part.".

(b) DEADLINES AND EFFECTIVE DATE.—

(1) The Secretary of Health and Human Services shall establish the relative value scale and fee schedules for radiologist services (under section 1834(b) of the Social Security Act) by not later than August 1, 1988, and shall report to Congress on the development of such fee schedules not later than August 1, 1988.

(2) The amendments made by this section shall apply to services performed on or after January 1, 1989, and until such time as the Secretary of Health and Human Services implements physician fee schedules based on the relative value scale developed under section 1845(e) of the Social Security Act.

SEC. 4050. FEE SCHEDULES FOR PHYSICIAN PATHOLOGY SERVICES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall develop—

(1) a relative value scale to serve as the basis for the payment for physician pathology services under part B of title XVIII of the Social Security Act,

(2) using such scale and appropriate conversion factors, proposed fee schedules (on a regional, statewide, or carrier service area basis) for payment for physician pathology services under such part, that could be implemented for such services furnished during 1990, and

(3) an appropriate index to be applied to updating such fee schedules annually for physician pathology services furnished in years after 1990.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the College of American Pathologists, and other organizations representing physicians who furnish physician pathology services and shall share with them the data and data analysis being used to make the determinations under subsection (a), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

(c) CONSIDERATION.—In developing the fee schedules under subsection (a), the Secretary shall take into consideration variations in the cost of furnishing physician pathology services among geographic areas.

(d) REPORT.—The Secretary shall report, not later than April 1, 1989, to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the relative value scale, fee schedules, and the index developed under this section. Such report shall include recommendations on how to protect medicare beneficiaries against excessive charges for physician pathology services above the payment amounts established by the fee schedules.

SEC. 4051. ELIMINATION OF MARKUP FOR CERTAIN PURCHASED SERVICES.

(a) IN GENERAL.—Section 1842 of the Social Security Act (42 U.S.C. 1935u) is amended by adding at the end the following new subsection:

"(n)(1) If a physician's bill or a request for payment for services billed by a physician includes a charge to a patient for a diagnostic test described in section 1861(s)(3) (other than a clinical diagnostic laboratory test) for which payment does not indicate that the billing physician personally performed or supervised the performance of the test or that another physician with whom the physician who shares his practice personally performed or supervised the test, the amount payable with respect to the test shall be determined as follows:

"(A) If the bill or request for payment indicates that the test was performed by a supplier, identifies the supplier, and indi-

cates the amount the supplier charged the billing physician, payment for the test (less the applicable deductible and coinsurance amounts) shall be the actual acquisition costs (net of any discounts) or, if lower, the supplier's reasonable charge to individuals enrolled under this part for the test.

"(B) If the bill or request for payment (i) does not indicate who performed the test, or (ii) indicates that the test was performed by a supplier but does not identify the supplier or include the amount charged by the supplier, no payment shall be made under this part.

"(2) A physician may not bill an individual enrolled under this part—

"(A) any amount other than any applicable deductible and coinsurance for a diagnostic test for which payment is made pursuant to paragraph (1)(A), or

"(B) any amount for a diagnostic test for which payment may not be made pursuant to paragraph (1)(B).

"(3) If a physician knowingly and willfully in repeated cases bills one or more individuals in violation of paragraph (2), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).".

(b) ADJUSTMENT IN MEDICARE PREVAILING CHARGES.—

(1) REVIEW.—The Secretary of Health and Human Services shall review payment levels under part B of title XVIII of the Social Security Act for diagnostic tests (described in section 1861(s)(3) of such Act, but excluding clinical diagnostic laboratory tests) which are commonly performed by independent suppliers, sold as a service to physicians, and billed by such physicians, in order to determine the reasonableness of payment amounts for such tests (and for associated professional services component of such tests). The Secretary may require physicians and suppliers to provide such information on the purchase or sale price (net of any discounts) for such tests as is necessary to complete the review and make the adjustments under this subsection. The Secretary shall also review the reasonableness of payment levels for comparable in-office diagnostic tests.

(2) ESTABLISHMENT OF REVISED PAYMENT SCREENS.—If, as a result of such review, the Secretary determines, after notice and opportunity of at least 60 days for public comment, that the current prevailing charge levels (under the third and fourth sentences of section 1842(b) of the Social Security Act) for any such tests or associated professional services are excessive, the Secretary shall establish such charge levels at levels which, consistent with assuring that the test is widely and consistently available to medicare beneficiaries, reflect a reasonable price for the test without any markup. Alternatively, the Secretary, pursuant to guidelines published after notice and opportunity of at least 60 days for public comment, may delegate to carriers with contracts under section 1842 of the Social Security Act the establishment of new prevailing charge levels under this paragraph. When such charge levels are established, the provisions of section 1842(j)(1)(D) of such Act shall apply in the same manner as they apply to a reduction under section 1842(b)(8)(A) of such Act.

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to diagnostic tests performed on or after April 1, 1988.

(2) The Secretary of Health and Human Services shall complete the review and make an appropriate adjustment of prevailing charge levels under subsection (b) for items and services furnished no later than January 1, 1989.

SEC. 4052. COLLECTION OF PAST-DUE AMOUNTS OWED BY PHYSICIANS WHO BREACHED CONTRACTS UNDER THE NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM.

(a) IN GENERAL.—Title XVIII of the Social Security Act, as previously amended by this subtitle, is amended by adding at the end thereof the following new section:

"OFFSET OF PAYMENTS TO PHYSICIANS TO COLLECT PAST-DUE OBLIGATIONS ARISING FROM BREACH OF SCHOLARSHIP CONTRACT

"SEC. 1892. (a) IN GENERAL.—

"(1)(A) Subject to subparagraph (B), the Secretary shall enter into an agreement under this section with any physician who, by reason of a breach of a contract entered into by such physician pursuant to the National Health Service Corps Scholarship Program, owes a past-due obligation to the United States (as defined in subsection (b)).

"(B) The Secretary shall not enter into an agreement with a physician under this section to the extent—

"(i)(I) the physician has entered into a contract with the Secretary pursuant to section 204(a)(1) of the Public Health Service Amendments of 1987, and

"(II) the physician has fulfilled or (as determined by the Secretary) is fulfilling the terms of such contract; or

"(ii) the liability of the physician under such section 204(a)(1) has otherwise been relieved under such section; or

"(iii) the physician is performing such physician's service obligation under a forbearance agreement entered into with the Secretary under subpart II of part D of title III of the Public Health Service Act.

"(2) The agreement under this section shall provide that—

"(A) deductions shall be made from the amounts otherwise payable to the physician under this title, in accordance with a formula and schedule agreed to by the Secretary and the physician, until such past-due obligation (and accrued interest) have been repaid;

"(B) payment under this title for services provided by such physician shall be made only on an assignment-related basis;

"(C) if the physician does not provide services, for which payment would otherwise be made under this title, of a sufficient quantity to maintain the offset collection according to the agreed upon formula and schedule—

"(i) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

"(ii) subject to paragraph (3), the Secretary shall immediately exclude the physician from the program under this title, until such time as the entire past-due obligation has been repaid.

"(3) If the physician refuses to enter into an agreement or breaches any provision of the agreement—

"(A) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

"(B) subject to paragraph (3), the Secretary shall immediately exclude the physician from the program under this title, until such time as the entire past-due obligation has been repaid.

"(4) The Secretary shall not bar a physician pursuant to paragraph (2)(C)(ii) or paragraph (3)(B) if such physician is a sole community physician or sole source of essential specialized services in a community.

"(b) PAST-DUE OBLIGATION.—For purposes of this section, a past-due obligation is any amount—

"(1) owed by a physician to the United States by reason of a breach of a scholarship contract under section 338E of the Public Health Service Act, and

"(2) which has not been paid by the deadline established by the Secretary pursuant to section 338E of the Public Health Service Act, and has not been canceled, waived, or suspended by the Secretary pursuant to such section.

"(c) COLLECTION UNDER THIS SECTION SHALL NOT BE EXCLUSIVE.—This section shall not preclude the United States from applying other provisions of law otherwise applicable to the collection of obligations owed to the United States, including (but not limited to) the use of tax refund offsets pursuant to section 3720A of title 31, United States Code, and the application of other procedures provided under chapter 37 of title 31, United States Code.

"(d) COLLECTION FROM PROVIDERS AND HEALTH MAINTENANCE ORGANIZATIONS.—

"(1) In the case of a physician who owes a past-due obligation, and who is an employee of, or affiliated by a medical services agreement with, a provider having an agreement under section 1866 or a health maintenance organization or competitive medical plan having a contract under section 1833 or section 1876, the Secretary shall deduct the amounts of such past-due obligation from amounts otherwise payable under this title to such provider, organization, or plan.

"(2) Deductions shall be in accordance with a formula and schedule agreed to by the Secretary, the physician and the provider, organization, or plan. The deductions shall be made from the amounts otherwise payable to the physician under this title as long as the physician continued to be employed or affiliated by a medical services agreement.

"(3) Such deduction shall not be made until 6 months after the Secretary notifies the provider, organization, or plan of the amount to be deducted and the particular physicians to whom the deductions are attributable.

"(4) A deduction made under this subsection shall relieve the physician of the obligation (to the extent of the amount collected) to the United States, but the provider, organization, or plan shall have a right of action to collect from such physician the amount deducted pursuant to this subsection (including accumulated interest).

"(5) No deduction shall be made under this subsection if, within the 6-month period after notice is given to the provider, organization, or plan, the physician pays the past-due obligation, or ceases to be employed by the provider, organization, or plan.

"(6) The Secretary shall also apply the provisions of this subsection in the case of a physician who is a member of a group practice, if such group practice submits bills under this program as a group, rather than by individual physicians.

"(e) TRANSFER FROM TRUST FUNDS.—Amounts equal to the amounts deducted pursuant to this section shall be transferred from the Trust Fund from which the payment to the physician, provider, or other entity would otherwise have been made, to the general fund in the Treasury, and shall be credited as payment of the past-due obligation of the physician from whom (or with respect to whom) the deduction was made.".

(b) CONFORMING REFERENCE.—Section 338E(b)(1) of the Public Health Service Act (42 U.S.C. 254o(b)(1)) is amended by adding at the end thereof the following new sentence: "Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1892 of the Social Security Act.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on the date of the enactment of this Act.

SEC. 4052. ELIMINATION OF 1975 FLOOR FOR PREVAILING PHYSICIAN CHARGES.

(a) IN GENERAL.—Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)) is amended by striking the next-to-last sentence (which begins "Notwithstanding the provisions of").

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payment for services furnished on or after January 1, 1988.

SEC. 4053. APPLICATION OF MAXIMUM ALLOWABLE ACTUAL CHARGE (MAAC).

(a) APPLICATION ON INDIVIDUAL CHARGE BASIS.—Section 1842(j)(1) of the Social Security Act (42 U.S.C. 1395u(j)(1)) is amended—

(1) in the first sentence of subparagraph (B)(i), by striking "each such physician's actual charges" and inserting "the actual charges of each such physician";

(2) in the second sentence of subparagraph (B)(i), by striking "for such a service a physician's actual charge (as defined in subparagraph (C)(vi)" and inserting "on a repeated basis for such a service an actual charge"; and

(3) in subparagraph (C)(vi), by striking "and subparagraph (B)".

(b) ADJUSTMENT.—In the case of a physician who did not have actual charges under title XVIII of the Social Security Act for a

procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of a carrier that he or she had actual charges (whether under such title or otherwise) for the procedure performed prior to June 30, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act for such procedure performed by such physician in 1988 based on such physician's actual charges for the procedure.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to charges imposed for services furnished on or after April 1, 1988.

SEC. 4054. APPLYING COPAYMENT AND DEDUCTIBLE TO CERTAIN OUTPATIENT PHYSICIANS' SERVICES.

Notwithstanding any other provision of law, payment under part B of title XVIII of the Social Security Act for physicians' services specified in section 1833(i)(1) of such Act and furnished on or after April 1, 1988, in an ambulatory surgical center or hospital outpatient department on an assignment-related basis shall be subject to the deductible under section 1833(b) of such Act and 20 percent coinsurance.

SEC. 4055. PHYSICIAN PAYMENT STUDIES.

(a) DEFINITIONS OF MEDICAL AND SURGICAL PROCEDURES.—

(1) REPORT ON VARIATIONS IN CARRIER PAYMENT PRACTICE.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a study of variations in payment practices for physicians' services among the different carriers under section 1842 of the Social Security Act. Such study shall examine carrier variations in the services included in global fees and pre- and post-operative services included in payment for the operation. The Secretary shall report to Congress on such study by not later than May 1, 1988.

(2) UNIFORM DEFINITIONS OF PROCEDURES FOR PAYMENT PURPOSES.—The Secretary shall develop, in consultation with appropriate national medical specialty societies and by not later than July 1, 1989, uniform definitions of physicians' services (including appropriate classification scheme for procedures) which could serve as the basis for making payments for such services under part B of title XVIII of the Social Security Act. In developing such list, to the extent practicable—

(A) ancillary services commonly performed in conjunction with a major procedure would be included with the major procedure;

(B) pre- and post-procedure services would be included in the procedure; and

(C) similar procedures would be listed together if the procedures are similar in resource requirements.

(b) EXPANSION OF RELATIVE VALUE SCALE (RVS) STUDY.—

(1) ADDITIONAL SERVICES.—The Secretary shall expand the study being conducted, under section 1845(e) of the Social Security Act, to develop a relative value scale for physicians' services to include physicians' services in the fields of cardiology, dermatology, emergency medicine, gastroenterology, hematology, infectious disease, nephrology, neurology, neurosurgery, nuclear medicine, oncology, physical medicine and rehabilitation, plas-

tic surgery, pulmonary medicine, and radiation therapy, and for physicians who specialize in osteopathic procedures.

(2) NO DELAY IN CURRENT STUDY.—The expansion under paragraph (1) shall not be conducted in a manner that delays the completion of the current study or the report to Congress required under section 1845(e)(3) of the Social Security Act. The Secretary shall report to Congress on the services described in paragraph (1) by not later than October 1, 1989.

(3) PROMPT SUBMITTAL OF STUDY RESULTS TO PHYSICIAN PAYMENT REVIEW COMMISSION.—The Secretary shall submit to the Physician Payment Review Commission a copy of any report submitted to the Secretary pursuant to a cooperative agreement in the fulfillment of the requirement of section 1845(e) of such Act, with all relevant supporting data (including survey data, analytic data files, and file documentation), by no later than 30 days after the date the final report is received by the Secretary.

(c) OTHER PHYSICIAN PAYMENT STUDIES.—

(1) FEE SCHEDULE IMPLEMENTATION.—The Secretary shall conduct a study of changes in the payment system for physicians' services, under part B of title XVIII of the Social Security Act, that would be required for the implementation of a national fee schedule for such services furnished on or after January 1, 1990. Such study shall identify any major technical problems related to such implementation and recommendations on ways in which to address such problems. The Secretary shall report to the Congress on such study by not later than July 1, 1989.

(2) VOLUME AND INTENSITY OF PHYSICIAN SERVICES.—The Secretary shall conduct a study of issues relating to the volume and intensity of physicians' services under part B of title XVIII of the Social Security Act, including—

(A) historical trends with regard to increases in the volume and intensity of physicians' services furnished on a per enrollee basis (with appropriate adjustments to account for changes in the demographic composition of the medicare population);

(B) geographic variations in volume and intensity in physicians' services;

(C) an analysis of the effectiveness of methods currently used under such part to ensure that payments under such part are made only for services which are medically necessary;

(D) the development and analysis of alternative methods to control the volume of services; and

(E) the impact of the implementation of the relative value scale developed under section 1845(e) of such Act on the volume and intensity of physicians' services.

The Secretary shall submit to Congress an interim report on such study not later than May 1, 1988, and a final report on such study not later than May 1, 1989.

(3) SURVEY OF OUT-OF-POCKET COSTS OF MEDICARE BENEFICIARIES FOR HEALTH CARE SERVICES.—The Secretary shall conduct a survey to determine the distribution of—

(A) the liabilities and expenditures for health care services of individuals entitled to benefits under title XVIII of

the Social Security Act, including liabilities for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, and

(B) the collection rates among different classes of physicians for such liabilities, including collection rates for required coinsurance and for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized.

The Secretary shall report to Congress on such study by not later than July 1, 1990.

(d) STUDY OF PAYMENT FOR CHEMOTHERAPY IN PHYSICIANS' OFFICES.—

(1) IN GENERAL.—The Secretary shall study ways of modifying part B of title XVIII of the Social Security Act to permit adequate payment under such part for the costs associated with providing chemotherapy to cancer patients in physicians' offices. The study shall be performed in consultation with physicians and other health care providers who are experts in cancer therapy and with representation of health insurers who have experience in these payment issues.

(2) REPORT.—The Secretary shall report to Congress on the results of the study by not later than April 1, 1989.

Subpart B—Provisions Relating to Payments for Other Services

SEC. 4061. EXTENSION OF REDUCTION FOR OTHER PART B ITEMS AND SERVICES PAYMENTS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1988, with respect to payments for all items and services (other than physicians' services) under part B of such title.

SEC. 4062. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.

(a) 1-YEAR FREEZE ON CHARGE LIMITATIONS.—

(1) IN GENERAL.—In imposing limitations on allowable charges for items and services (other than physicians' services) furnished in 1988 under part B of title XVIII of such Act and for which payment is made on the basis of the reasonable charge for the item or service, the Secretary of Health and Human Services shall not impose any limitation at a level higher than the same level as was in effect in December 1987.

(2) TRANSITION.—The provisions of section 4041(a)(2) (other than subparagraph (D) thereof) of this subtitle shall apply to suppliers of items and services described in paragraph (1), and directories of participating suppliers of such items and services, in the same manner as such section applies to physicians fur-

nishing physicians' services, and directories of participating physicians.

(b) AMOUNT AND FREQUENCY OF PAYMENT FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—Part B of title XVIII of the Social Security Act is amended by inserting after section 1833 the following new section:

"SPECIAL PAYMENT RULES FOR PARTICULAR SERVICES

"SEC. 1834. (a) PAYMENT FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—

"(1) GENERAL RULE FOR PAYMENT.—

"(A) IN GENERAL.—With respect to a covered item (as defined in paragraph (13)) for which payment is determined under this subsection, payment shall be made in the frequency specified in paragraphs (2) through (7) and in an amount equal to 80 percent of the payment basis described in subparagraph (B).

"(B) PAYMENT BASIS.—The payment basis described in this subparagraph is the lesser of—

"(i) the actual charge for the item, or

"(ii) the payment amount recognized under paragraphs (2) through (7) of this subsection for the item;

except that clause (i) shall not apply if the covered item is furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

"(C) EXCLUSIVE PAYMENT RULE.—This subsection shall constitute the exclusive provision of this title for payment for covered items under this part.

"(2) PAYMENT FOR INEXPENSIVE AND OTHER ROUTINELY PURCHASED DURABLE MEDICAL EQUIPMENT.—

"(A) IN GENERAL.—Payment for an item of durable medical equipment (as defined in paragraph (13)(A))—

"(i) the purchase price of which does not exceed $150, or

"(ii) which the Secretary determines is acquired at least 75 percent of the time by purchase,

shall be made on a rental basis or in a lump-sum amount for the purchase of the item. The payment amount recognized for purchase or rental of such equipment is the amount specified in subparagraph (B) for purchase or rental, except that the total amount of rental payments with respect to an item may not exceed the payment amount specified in subparagraph (B) with respect to the purchase of the item.

"(B) PAYMENT AMOUNT.—For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to the purchase or rental of an item furnished in a carrier service area—

"(i) in 1989 is the average allowed charge in the area for the purchase or rental, respectively, of the item for

the 12-month period ending on June 30, 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987; or

"(ii) in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.

"(3) PAYMENT FOR ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—

"(A) IN GENERAL.—Payment for a covered item (such as ventilators , aspirators, IPPB machines, and nebulizers) for which there must be frequent and substantial servicing in order to avoid risk to the patient's health shall be made on a monthly basis for the rental of the item and the amount recognized is the amount specified in subparagraph (B).

"(B) PAYMENT AMOUNT.—For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to an item or device furnished in a carrier service area—

"(i) in 1989 is the average allowable charge in the area for the rental of the item or device for the 12-month period ending with June, 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987; or

"(ii) in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.

"(4) PAYMENT FOR CERTAIN CUSTOMIZED ITEMS.—Payment with respect to a covered item that is uniquely constructed or substantially modified to meet the specific needs of an individual patient shall be made in a lump-sum amount for the purchase of the item in a payment amount based upon the carrier's individual consideration for that item, and for the reasonable and necessary maintenance and service for parts and labor not covered by the supplier's or manufacturer's warranty, when necessary during the period of medical need, and the amount recognized for such maintenance and service shall be paid on a lump-sum, as needed basis based upon the carrier's individual consideration for that item.

"(5) PAYMENT FOR OXYGEN AND OXYGEN EQUIPMENT.—

"(A) IN GENERAL.—Payment for oxygen and oxygen equipment shall be made on a monthly basis in the monthly payment amount recognized under paragraph (9) for oxygen and oxygen equipment (other than portable oxygen equipment), subject to subparagraphs (B) and (C).

"(B) ADD-ON FOR PORTABLE OXYGEN EQUIPMENT.—When portable oxygen equipment is used, but subject to subparagraph (D), the payment amount recognized under subparagraph (A) shall be increased by the monthly payment

amount recognized under paragraph (9) for portable oxygen equipment.

"(C) VOLUME ADJUSTMENT.—When the attending physician prescribes an oxygen flow rate—

"(i) exceeding 4 liters per minute, the payment amount recognized under subparagraph (A), subject to subparagraph (D), shall be increased by 50 percent, or

"(ii) of less than 1 liter per minute, the payment amount recognized under subparagraph (A) shall be decreased by 50 percent.

"(D) LIMIT ON ADJUSTMENT.—When portable oxygen equipment is used and the attending physician prescribes an oxygen flow rate exceeding 4 liters per minute, there shall only be an increase under either subparagraph (B) or (C), whichever increase is larger, and not under both such subparagraphs.

"(6) PAYMENT FOR OTHER COVERED ITEMS (OTHER THAN DURABLE MEDICAL EQUIPMENT).—Payment for other covered items (other than durable medical equipment and other covered items described in paragraph (3), (4), or (5)) shall be made in a lump-sum amount for the purchase of the item in the amount of the purchase price recognized under paragraph (8).

"(7) PAYMENT FOR OTHER ITEMS OF DURABLE MEDICAL EQUIPMENT.—

"(A) IN GENERAL.—In the case of an item of durable medical equipment not described in paragraphs (2) through (6)—

"(i) payment shall be made on a monthly basis for the rental of such item during the period of medical need (but payments under this subparagraph may not extend over a period of continuous use of longer than 15 months), and, subject to subparagraph (B), the amount recognized for each such month is 10 percent of the purchase price recognized under paragraph (8) with respect to the item;

"(ii) during the succeeding 6-month period of medical need, no payment shall be made for rental or servicing of the item; and

"(iii) during the first month of each succeeding 6-month period of medical need, a service and maintenance payment may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment) and the amount recognized for each such 6-month period is the lower of (I) a reasonable and necessary maintenance and servicing fee established by the carrier, or (II) 10 percent of the total of the purchase price recognized under paragraph (8) with respect to the item.

The Secretary shall determine the meaning of the term 'continuous' in subparagraph (A).

"(B) RANGE FOR RENTAL AMOUNTS.—

"(i) FOR 1989.—For items furnished during 1989, the payment amount recognized under subparagraph (A)(i)

shall not be more than 115 percent, and shall not be less than 85 percent, of the prevailing charge established for rental of the item January 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987.

"(ii) FOR 1990.—For items furnished during 1990, the payment amount recognized under subparagraph (A)(i) shall not be more than the maximum amount established under clause (i), and shall not be less than the minimum amount established under such clause, for 1989, each such amount increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 1989.

"(8) PURCHASE PRICE RECOGNIZED FOR MISCELLANEOUS DEVICES AND ITEMS.—For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for a covered item is the amount described in subparagraph (C) of this paragraph, determined as follows:

"(A) COMPUTATION OF LOCAL PURCHASE PRICE.—Each carrier under section 1842 shall compute a base local purchase price for the item as follows:

"(i) The carrier shall compute a base local purchase price, for each item described—

"(I) in paragraph (6) equal to the average allowable charge in the locality for the purchase of the item for the 12-month period ending with June 1987, or

"(II) in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during the 6-month period ending with December 1986.

"(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

"(I) in 1989, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987, or

"(II) in 1990, 1991, or 1992, equal to the local purchase price computed under this clause for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

"(B) COMPUTATION OF REGIONAL PURCHASE PRICE.—With respect to the furnishing of a particular item in each region (as defined in section 1886(d)(2)(D)), the Secretary shall compute a regional purchase price—

"(i) for 1991, and for 1992, equal to the average (weighted by relative volume of all claims among carri-

ers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

"(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

"(C) PURCHASE PRICE RECOGNIZED.—For purposes of paragraphs (6) and (7) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished—

"(i) in 1989 or 1990, is 100 percent of the local purchase price computed under subparagraph (A)(ii)(I);

"(ii) in 1991, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1991, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1991;

"(iii) in 1992, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1992, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1992; and

"(iv) in 1993 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

"(D) RANGE ON AMOUNT RECOGNIZED.—The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

"(i) in 1991, may not exceed 130 percent, and may not be lower than 80 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

"(ii) in a subsequent year, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

"(9) MONTHLY PAYMENT AMOUNT RECOGNIZED WITH RESPECT TO OXYGEN AND OXYGEN EQUIPMENT.—For purposes of paragraph (5), the amount that is recognized under this paragraph for payment for oxygen and oxygen equipment is the monthly payment amount described in subparagraph (C) of this paragraph. Such amount shall be computed separately (i) for all items of oxygen and oxygen equipment (other than portable oxygen equipment) and (ii) for portable oxygen equipment (each such group referred to in this paragraph as an 'item').

"(A) COMPUTATION OF LOCAL MONTHLY PAYMENT RATE.—Each carrier under this section shall compute a base local payment rate for each item as follows:

"(i) The carrier shall compute a base local average monthly payment rate per beneficiary as an amount equal to (I) the total reasonable charges for the item

during the 12-month period ending with December 1986, divided by (II) the total number of months for all beneficiaries receiving the item in the area during the 12-month period for which the carrier made payment for the item under this title.

"(ii) The carrier shall compute a local average monthly payment rate for the item applicable—

"(I) to 1989, equal to 95 percent of the base local average monthly payment rate computed under clause (i) for the item increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987, or

"(II) to 1990 and to 1991, equal to the local average monthly payment rate computed under this clause for the item for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

"(B) COMPUTATION OF REGIONAL MONTHLY PAYMENT RATE.—With respect to the furnishing of an item in each region (as defined in section 1886(d)(2)(D)), the Secretary shall compute a regional monthly payment rate—

"(i) for 1991, and 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local monthly payment rates for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

"(ii) for each subsequent year, equal to the regional monthly payment rates computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

"(C) MONTHLY PAYMENT AMOUNT RECOGNIZED.—For purposes of paragraph (5), the amount that is recognized under this paragraph as the base monthly payment amount for each item furnished—

"(i) in 1989 and in 1990, is 100 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(I) for the item;

"(ii) in 1991, is the sum of (I) 75 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1991, and (II) 25 percent of the regional monthly payment rate computed under subparagraph (B)(i) for the item for 1991;

"(iii) in 1992, is the sum of (I) 50 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1992, and (II) 50 percent of the regional monthly payment rate computed under subparagraph (B)(i) for the item for 1992; and

"(iv) in a subsequent year, is the regional monthly payment rate computed under subparagraph (B) for the item for that year.

"(D) RANGE ON AMOUNT RECOGNIZED.—The amount that is recognized under subparagraph (C) as the base monthly payment amount for an item furnished—

"(i) in 1991, may not exceed 130 percent, and may not be lower than 80 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year; and

"(ii) in a subsequent year, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year.

"(10) EXCEPTIONS AND ADJUSTMENTS.—

"(A) AREAS OUTSIDE CONTINENTAL UNITED STATES.—Exceptions to the amounts recognized under the previous provisions of this subsection shall be made to take into account the unique circumstances of covered items furnished in Alaska, Hawaii, or Puerto Rico.

"(B) ADJUSTMENT FOR INHERENT REASONABLENESS.—For covered items furnished on or after January 1, 1991, the Secretary is authorized to apply the provisions of paragraphs (8) and (9) (other than subparagraph (D)) of section 1842(b) to covered items and suppliers of such items.

"(C) TRANSCUTANEOUS ELECTRICAL NERVE STIMULATOR (TENS).—In order to permit an attending physician time to determine whether the purchase of a transcutaneous electrical nerve stimulator is medically appropriate for a particular patient, the Secretary may determine an appropriate payment amount for the initial rental of such item for a period of not more than 2 months. If such item is subsequently purchased, the payment amount with respect to such purchase is the payment amount determined under paragraph (2).

"(11) IMPROPER BILLING AND REQUIREMENT OF PHYSICIAN ORDER.—

"(A) IMPROPER BILLING FOR CERTAIN RENTAL ITEMS.—Notwithstanding any other provision of this title, a supplier of a covered item for which payment is made under this subsection and which is furnished on a rental basis shall continue to supply the item without charge (other than a charge provided under this subsection for the servicing of the item) after rental payments may no longer be made under this subsection. If a supplier knowingly and willfully violates the previous sentence, the Secretary may apply sanctions against the supplier under subsection (j)(2) in the same manner such sanctions may apply with respect to a physician.

"(B) REQUIREMENT OF PHYSICIAN ORDER.—The Secretary is authorized to require, for specified covered items, that payment may be made under this subsection with respect to

the item only if a physician has communicated to the supplier, before delivery of the item, a written order for the item.

"(12) REGIONAL CARRIERS.—The Secretary may designate, by regulation under section 1842, one carrier for each region (as defined in section 1886(d)(2)(D)) to process all claims within the region for covered items under this section.

"(13) COVERED ITEM.—In this subsection, the term 'covered item' means—

"(A) durable medical equipment (as defined in section 1861(n)), including such equipment described in section 1861(m)(5);

"(B) prosthetic devices (described in section 1861(s)(8)), but not including parenteral and enteral nutrition nutrients, supplies, and equipment; and

"(C) orthotics and prosthetics (described in section 1861(s)(9));

but does not include intraocular lenses.

"(14) CARRIER.—In this subsection, any reference to the term 'carrier' includes a reference, with respect to durable medical equipment furnished by a home health agency as part of home health services, to a fiscal intermediary.".

(c) STUDY AND EVALUATION.—(1) The Secretary of Health and Human Services shall monitor the impact of the amendments made by this section on the availability of covered items and shall evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment under section 1834(a)(5)(C) of the Social Security Act (as amended by subsection (b) of this section). The Secretary shall report to Congress, by not later than January 1, 1991, on such impact and on the evaluation and shall include in such report recommendations for changes in payment methodology for covered items under section 1834(a) of such Act.

(2) Before January 1, 1991, the Secretary may not conduct any demonstration project respecting alternative methods of payment for covered items under title XVIII of the Social Security Act.

(3) In this subsection, the term "covered item" has the meaning given such term in section 1834(a)(13) of the Social Security Act (as amended by subsection (b) of this section).

(4) The Secretary shall, upon written request, provide the data and information used in determining the payment amounts for covered items under section 1834(a) of the Social Security Act.

(5) The Comptroller General shall conduct a study on the appropriateness of the level of payments allowed for covered items under the medicare program, and shall report to Congress on the results of such study (including recommendations on the transition to regional or national rates) by not later than January 1, 1991. Entities furnishing such items which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act.

(d) CONFORMING AMENDMENTS.—

(1) Section 1814 of such Act (42 U.S.C. 1395f) is amended—

(A) in subsection (j)(2)(B), by amending subparagraph (B) to read as follows:

"(B) Section 1834(a)(1)(B).", and

(B) in subsection (k), by striking all that follows "shall be" and insert "the amount described in section 1834(a)(1).".

(2) Section 1832(a) of such Act (42 U.S.C. 1395k(a)) is amended—

(A) in paragraph (2)(A), by inserting "(other than items described in subparagraph (G))" after "services";

(B) in paragraph (2)(B), by inserting "(other than items described in subparagraph (G))" after "medical and other health services"; and

(C) in paragraph (2)—

(i) by striking "and" at the end of subparagraph (E),

(ii) by striking the period at the end of subparagraph (F) and inserting "; and", and

(iii) by adding at the end the following new subparagraph:

"(G) covered items (described in section 1834(a)(13)) furnished by a provider of services or by others under arrangements with them made by a provider of services.".

(3) Section 1833(a) of such Act (42 U.S.C. 1395l(a)) is amended—

(A) in paragraph (1)—

(i) by striking "; and" at the end of clause (G) and inserting a comma, and

(ii) by adding at the end the following: "and (I) with respect to covered items (described in section 1834(a)(13)), the amounts paid shall be the amounts described in section 1834(a)(1),";

(B) in paragraph (2)—

(i) by striking "and (F)" and inserting "(F), and (G)", and

(ii) in subparagraph (A), by striking "(other than durable medical equipment)";

(B) by striking "and" at the end of paragraph (3);

(C) by striking the period at the end of paragraph (4) and inserting "; and"; and

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

"(5) in the case of covered items (described in section 1834(a)(13)) the amounts described in section 1834(a)(1).".

(4) Section 1866(a)(2)(A) of such Act (42 U.S.C. 1395cc(a)(2)(A)) is amended by adding at the end the following new sentence: "Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1834(a), the amount of any deduction imposed under section 1833(b) and 20 percent of the payment basis described in section 1834(a)(2).".

(5) Section 1889 of such Act (42 U.S.C. 1395zz) is repealed.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to covered items furnished on or after January 1, 1989.

SEC. 4063. PAYMENT FOR INTRAOCULAR LENSES.

(a) PROVIDED IN PHYSICIAN'S OFFICE.—Section 1842 of the Social Security Act (42 .U.S.C. 1395u), as previously amended is amended—

(1) in subsection (b)(11)(C), as inserted by section 4046(a)(1)(C) of this subtitle—

"(A) by inserting "(i)" after "(C)" and by adding at the end the following new clause:

"(ii) The reasonable charge for an intraocular lens implanted during cataract surgery in a physician's office may not exceed the actual acquisition cost for the lens (taking into account any discount) plus a handling fee (not to exceed 5 percent of such actual acquisition cost).", and

(C) in subparagraph (D), as so redesignated and as amended by section 4046(a)(1) of this subtitle, by inserting "or item" after "service" or "services" each place either appears; and

(2) in subsection (j)(1)(D), as added by section 4045(c)(1)(B) of this subtitle and as amended by 4046(a)(2) of this subtitle—

(A) in clause (ii), by striking "and" at the end of subclause (IV), by redesignating subclause (V) as subclause (VI) and by inserting before such subclause the following new subclause:

"(IV) a reasonable charge limit is established under subsection (b)(11)(C)(ii), and"; and

(B) in clause (iii)—

(i) by striking "or" at the end of subclause (I),

(ii) in subclause (II), by striking "(b)(11)(C)" and inserting "(b)(11)(C)(i)",

(iii) by striking the period at the end of subclause (II) and inserting "; or", and

(iv) by adding at the end the following new subclause:

"(III) under subsection (b)(11)(C)(ii), the payment allowance established under such subsection.".

(b) PROVIDED IN AMBULATORY SURGICAL CENTERS.—Section 1833(i)(2)(A) of such Act (42 U.S.C. 1395l(i)(2)(A)) is amended—

(1) by striking "and" at the end of clause (i),

(2) by striking the period at the end of clause (ii) and inserting ", and", and

(3) by inserting after clause (ii) the following new clause:

"(iii) in the case of implantation of an intraocular lens during cataract surgery includes payment which is reasonable and related to the cost of acquiring the class of lens involved.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after July 1, 1988.

(d) SPECIAL RULE.—With respect to the establishment of a reasonable charge limit under section 1842(b)(11)(C)(ii) of the Social Security Act, in applying section 1842(j)(1)(D)(i) of such Act, the matter beginning with "plus" shall be considered to have been deleted.

SEC. 4064. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) LIMITATION ON CHANGES IN FEE SCHEDULES.—

(1) 3-MONTH FREEZE IN FEE SCHEDULES.—Notwithstanding any other provision of law, any change in the fee schedules for

clinical laboratory diagnostic laboratory tests under part B of title XVIII of such Act which would have become effective for tests furnished on or after January 1, 1988, shall not be effective for tests furnished during the 3-month period beginning on January 1, 1988.

(2) NO CPI INCREASE IN 1988.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not adjust the fee schedules established under section 1833(h) of the Social Security Act for 1988 to take into account any increase in the consumer price index.

(b) FEE SCHEDULES AND PAYMENT LIMITS.—

(1) REBASING OF FEE SCHEDULES FOR CERTAIN AUTOMATED AND SIMILAR TESTS.—Section 1833(h)(2) of the Social Security Act (42 U.S.C. 1395l(h)(2)) is amended by adding at the end the following: "In establishing fee schedules under the first sentence of this paragraph with respect to automated tests and tests (other than cytopathology tests) which before July 1, 1984, the Secretary made subject to a limit based on lowest charge levels under the sixth sentence of section 1842(b)(3) performed after March 31, 1988, the Secretary shall reduce by 8.3 percent the fee schedules otherwise established for 1988.".

(2) NATIONWIDE PAYMENT LIMITS.—Section 1833(h)(4)(B) of such Act is amended—

(A) in clause (i), by striking "January" and inserting "April", and

(B) by amending clause (ii) to read as follows:

"(ii) March 31, 1988, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

(3) EFFECTIVE DATES.—The amendments made by paragraphs (1) and (2) shall apply with respect to services furnished on or after April 1, 1988.

(4) GAO STUDY OF FEE SCHEDULES.—The Comptroller General shall conduct a study of the level of the fee schedules established for clinical diagnostic laboratory services under section 1833(h)(2) of the Social Security Act to determine, based on the costs of, and revenues received for, such tests the appropriateness of such schedules. The Comptroller General shall report to the Congress on the results of such study by not later than January 1, 1990. Suppliers of such tests which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act.

(c) LIMITATION ON APPLICATION OF 2 PERCENT HOSPITAL LAB DIFFERENTIAL.—Section 1833(h)(2) of such Act is amended by striking "hospital laboratory" and inserting "laboratory in a sole community hospital".

(d) INTERMEDIATE SANCTIONS.—

(1) Part B of title XVIII of such Act is amended by adding at the end thereof the following new section:

"INTERMEDIATE SANCTIONS FOR PROVIDERS OF CLINICAL DIAGNOSTIC LABORATORY TESTS"

"SEC. 1846. (a) If the Secretary determines that any provider or clinical laboratory certified for participation under this title no longer substantially meets the conditions of participation specified under this title with respect to the provision of clinical diagnostic laboratory tests under this part, the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b), in lieu of canceling immediately the certification of the provider or clinical laboratory.

"(b)(1) The Secretary shall develop and implement—

"(A) a range of intermediate sanctions to apply to providers or certified clinical laboratories under the conditions described in subsection (a), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) directed plans of correction,

"(ii) civil fines and penalties,

"(iii) payment for the costs of onsite monitoring by an agency responsible for conducting certification surveys, and

"(iv) suspension of all or part of the payments to which a provider or certified clinical laboratory would otherwise be entitled under this title with respect to clinical diagnostic laboratory tests provided on or after the date in which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a).

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

"(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any fines, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(2) The amendment made by paragraph (1) shall become effective on January 1, 1990.

(e) STATE CERTIFICATION OF HIGH-VOLUME PHYSICIAN OFFICE LABS.—

(1) Section 1861(s) of such Act (42 U.S.C. 1395x(s)) is amended, in the sentence following paragraph (11), by inserting "a laboratory not independent of a physician's office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year" after "physician's office,".

(2) The amendment made by paragraph (1) shall apply to diagnostic tests performed on or after January 1, 1990.

SEC. 4065. RETURN ON EQUITY PAYMENTS TO OUTPATIENT DEPARTMENTS.

(a) IN GENERAL.—Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end thereof the following new subparagraph:

"(S) Such regulations shall not include provision for specific recognition of any return on equity capital with respect to hospital outpatient departments.".

(b) CONFORMING AMENDMENT.—Section 1881(b)(2)(C) of such Act (42 U.S.C. 1395rr(b)(2)(C)) is amended by striking "facilities" and inserting "facilities (other than hospital outpatient departments)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on January 1, 1988.

SEC. 4066. PAYMENTS TO HOSPITAL OUTPATIENT DEPARTMENTS FOR RADIOLOGY.

(a) AMOUNTS PAYABLE.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(2)—

(A) by striking "and" in subparagraph (C),

(B) by adding "and" at the end of subparagraph (D), and

(C) by adding at the end thereof the following new subparagraph:

"(E) with respect to—

"(i) outpatient hospital radiology services (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures, magnetic resonance imaging, and ultrasound and other imaging services), and

"(ii) effective for procedures performed on or after October 1, 1989, diagnostic procedures (as defined by the Secretary) described in section 1861(s)(3) (other than diagnostic X-ray tests and diagnostic laboratory tests),

the amount determined under subsection (n);"; and

(2) by adding at the end, as previously amended, the following new subsection:

"(n)(1)(A) The aggregate amount of the payments to be made for all or part of a cost reporting period beginning on or after October 1, 1988 under this part for services described in subsection (a)(2)(E) shall be equal to the lesser of—

"(i) the amount determined with respect to such services under subsection (a)(2)(B), or

"(ii) the blend amount for radiology services and diagnostic procedures determined in accordance with subparagraph (B).

"(B)(i) The blend amount for radiology services and diagnostic procedures for a cost reporting period is the sum of—

"(I) the cost proportion (as defined in clause (ii)) of the amount described in subparagraph (A)(i); and

"(II) the charge proportion (as defined in clause (ii)(II)) of 62 percent (for services described in subsection (a)(2)(E)(i)), or (for procedures described in subsection (a)(2)(E)(ii)), 42 percent or such other percent established by the Secretary (or carriers acting pursuant to guidelines issued by the Secretary) based on prevailing charges established with actual charge data, of 80 percent of the prevailing charge for participating physicians for the same services as if they were furnished in a physician's office in the same locality as determined under section 1842(b).

"(ii) In this subparagraph:

"(I) The term 'cost proportion' means 65 percent for all or any part of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.

"(II) The term 'charge proportion' means 35 percent for all or any parts of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.".

(b) CONFORMING AMENDMENT.—Section 1833(a)(2)(B) of such Act (42 U.S.C. 1395l(a)(2)(B)) is amended in the matter preceding clause (i) by striking "(C) or (D)" and inserting "(C), (D), or (E)".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to outpatient hospital radiology services furnished on or after October 1, 1988, and other diagnostic procedures performed on or after October 1, 1989.

SEC. 4067. UPDATING MAXIMUM RATE OF PAYMENT PER VISIT FOR INDEPENDENT RURAL HEALTH CLINICS.

(a) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is further amended by inserting after subsection (e) the following new subsection:

"(f) In establishing limits under subsection (a) on payment for rural health clinic services provided by independent rural health clinics, the Secretary shall establish such limit, for services provided—

"(1) in 1988, after March 31, at $46, and

"(2) in a subsequent year, at the limit established under this subsection for the previous year increased by the percentage increase in the medicare economic index (referred to in the fourth sentence of section 1842(b)(3)) applicable to physicians' services furnished as of the first day of that year.".

(b) REPORT ON RATES.—The Secretary of Health and Human Services shall report to Congress, by not later than March 1, 1989, on the adequacy of the amounts paid under title XVIII of the Social Security Act for rural health clinic services provided by independent rural health clinics.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after April 1, 1988.

SEC. 4068. PAYMENT FOR AMBULATORY SURGERY AT EYE, AND EYE AND EAR, SPECIALTY HOSPITALS.

(a) IN GENERAL.—Section 1833(i)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended—

(1) by striking "In" and inserting "Subject to the last sentence of this clause, in"; and

(2) by adding at the end thereof the following:

"In the case of a hospital that makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary), receives more than 30 percent of its total revenues from outpatient services and was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987, the cost proportion and ASC proportion in effect under subclauses (I) and (II) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning in fiscal year 1989 or fiscal year 1990.".

(b) DEVELOPMENT OF PROSPECTIVE PAYMENT METHODOLOGY FOR OUTPATIENT HOSPITAL SERVICES.—Section 1135(d) of the Social Security Act (42 U.S.C. 1320b-5(d)) is amended—

(1) by adding at the end of paragraph (3) the following: "In establishing such rates, the Secretary shall consider whether a differential payment rate is appropriate for speciality hospitals."; and

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

"(7) The Secretary shall solicit the views of the Prospective Payment Assessment Commission in developing the systems under paragraphs (1) and (6), and shall include in the Secretary's reports under this subsection any views the Commission may submit with respect to such systems.".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the amendment made by section 9343(a)(1)(B) of the Omnibus Budget Reconciliation Act of 1986.

Subpart C—Eligibility and Benefits Changes

SEC. 4070. COVERAGE OF MENTAL HEALTH SERVICES.

(a) OUTPATIENT SERVICES UNDER PART B.—Section 1833(c) of the Social Security Act (42 U.S.C. 1395l(c)) is amended—

(1) by striking "$312.50" and inserting "$1375.00"; and

(2) by adding at the end thereof the following:

"For purposes of this subsection, the term 'treatment' does not include brief office visits (as defined by the Secretary) for the sole purpose of prescribing or monitoring prescription drugs used in the treatment of such disorders.".

(b) PARTIAL HOSPITALIZATION COVERAGE.—

(1) Section 1861(s)(2)(B) of such Act (42 U.S.C. 1395x(s)(2)(B)) is amended by inserting "and partial hospitalization services incident to such services" before the semicolon.

(2) Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"(ff)(1) The term 'partial hospitalization services' means the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which plan sets forth the physician's diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.

"(2) The items and services described in this paragraph are—

"(A) individual and group therapy with physicians or psychologists (or other mental health professionals to the extent authorized under State law),

"(B) occupational therapy requiring the skills of a qualified occupational therapist,

"(C) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients,

"(D) drugs and biologicals furnished for therapeutic purposes (which cannot, as determined in accordance with regulations, be self-administered),

"(E) individualized activity therapies that are not primarily recreational or diversionary,

"(F) family counseling (the primary purpose of which is treatment of the individual's condition),

"(G) patient training and education (to the extent that training and educational activities are closely and clearly related to individual's care and treatment),

"(H) diagnostic services, and

"(I) such other items and services as the Secretary may provide (but in no event to include meals and transportation);

that are reasonable and necessary for the diagnosis or active treatment of the individual's condition, reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization, and furnished pursuant to such guidelines relating to frequency and duration of services as the Secretary shall by regulation establish (taking into account accepted norms of medical practice and the reasonable expectation of patient improvement).

"(3) A program described in this paragraph is a program which is hospital-based or hospital-affiliated (as defined by the Secretary) and which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour-daily care.".

(3) Section 1835(a)(2) of such Act (42 U.S.C. 1395n(a)(2)) is amended—

(A) by striking "and" at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(C) by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of partial hospitalization services, (i) the individual would require inpatient psychiatric care in the absence of such services, (ii) an individualized, written plan for furnishing such services has been established by a physician and is reviewed periodically by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.".

(4) Section 1833(c) of such Act, as amended by subsection (a), is further amended at the end thereof by inserting "or partial hospitalization services that are not directly provided by a physician" before the period.

(c) EFFECTIVE DATE; IMPLEMENTATION.—

(1) The amendment made by subsection (a)(1) shall apply with respect to calendar years beginning with 1988; except that with respect to 1988, any reference in section 1833(c) of the Social Security Act, as amended by subsection (a), to "$1375.00" is deemed a reference to "$562.50". The amendment made by subsection (a)(2) shall apply to services furnished on or after January 1, 1989.

(2)(A) The amendments made by subsection (b) shall become effective on the date of enactment of this Act.

(B) The Secretary of Health and Human Services shall implement the amendments made by subsection (b) so as to ensure that there is no additional cost to the medicare program by reason of such amendments.

SEC. 4071. COVERAGE OF INFLUENZA VACCINE AND ITS ADMINISTRATION.

(a) IN GENERAL.—Section 1861(s)(10)(A) of the Social Security Act (42 U.S.C. 1395x(a)(10)(A)) is amended by inserting before the semicolon the following: "and influenza vaccine and its administration".

(b) CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.—

(1) The provisions of subsection (e) of section 4072 of this subpart shall apply to this section in the same manner as it applies to section 4072.

(2) In conducting the demonstration project pursuant to paragraph (1), in order to determine the cost effectiveness of including influenza vaccine in the medicare program, the Secretary of Health and Human Services is required to conduct a demonstration of the provision of influenza vaccine as a service for medicare beneficiaries and to expend $25,000,000 each year of the demonstration project for this purpose. In conducting this demonstration, the Secretary is authorized to purchase in bulk influenza vaccine and to distribute it in a manner to make it widely available to medicare beneficiaries, to develop projects to provide vaccine in the same manner as other covered medicare services in large scale demonstration projects, including statewide projects, and to engage in other appropriate use of moneys to provide influenza vaccine to medicare beneficiaries and evaluate the cost effectiveness of its use. In determining cost effectiveness, the Secretary shall consider the direct cost of the vaccine, the utilization of vaccine which might otherwise not have occurred, the costs of illnesses and nursing home days avoided, and other relevant factors, except that extended life for beneficiaries shall not be considered to reduce the cost effectiveness of the vaccine.

SEC. 4072. PAYMENT FOR THERAPEUTIC SHOES FOR INDIVIDUALS WITH SEVERE DIABETIC FOOT DISEASE.

(a) COVERAGE UNDER PART B.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (12) through (15) as paragraphs (13) through (16), respectively,

(2) by striking out "and" at the end of paragraph (10),

(3) by striking out the period at the end of paragraph (11) and inserting "; and", and

(4) by inserting after paragraph (11) the following new paragraph:

"(12) extra-depth shoes with inserts or custom molded shoes for an individual with diabetes, if—

"(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such

shoes under a comprehensive plan of care related to the individual's diabetic condition;

"(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

"(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area).".

(b) LIMITATION ON BENEFIT.—Section 1833 of such Act (42 U.S.C. 1395) is amended by inserting after subsection (e) the following new subsection:

"(f)(1) In the case of shoes described in section 1861(s)(12)—

"(A) no payment may be made under this part for the furnishing of more than one pair of shoes for any individual for any calendar year, and

"(B) with respect to expenses incurred in any calendar year, no more than the limit established under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b).

Payment for shoes under this part shall be considered to include payment for any expenses for the fitting of such shoes.

"(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the limit established under this paragraph—

"(i) for the furnishing of one pair of custom molded shoes is $300;

"(ii) for the furnishing of extra-depth shoes and inserts is—

"(I) $100 for the pair of shoes itself, and

"(II) $50 for inserts for a pair of shoes.

"(B) The Secretary or a carrier may establish limits for shoes that are lower than the limits established under subparagraph (A) if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below such lower limits.

"(C) For each year after 1988, each dollar amount under subparagraph (A) or (B) (as previously adjusted under this subparagraph) shall be increased by the same percentage increase as the Secretary provides with respect to durable medical equipment for that year, except that if such increase is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

"(3) In this title, the term 'shoes' includes, except for purposes of subparagraphs (A)(ii) and (B) of paragraph (2), inserts for extra-depth shoes.".

(c) MODIFICATION OF EXCLUSION.—Section 1862(a)(8) of such Act (42 U.S.C. 1395y(a)(8)) is amended by inserting ", other than shoes furnished pursuant to section 1861(s)(12)" before the semicolon.

(d) CONFORMING AMENDMENTS.—Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking out "paragraphs (12) and (13)" and inserting "paragraphs (13) and (14)".

(e) CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.—

(1) The amendments made by this section shall become effective (if at all) in accordance with paragraph (2).

(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary"), shall establish a demonstration project to begin on October 1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

(B)(i) The demonstration project under subparagraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Secretary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 1, 1990.

(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1993, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is not cost-effective (in which case the amendments made by this section shall not become effective).

SEC. 4073. COVERAGE OF CERTIFIED NURSE-MIDWIFE SERVICES.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (J);

(2) by adding "and" at the end of subparagraph (K); and

(3) by adding at the end thereof the following new subparagraph:

"(L) certified nurse-midwife services;".

(b) PAYMENT OF BENEFITS.—

(1) Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the semicolon at the end of clause (iii) and inserting a comma; and

(C) by adding at the end thereof the following new clause:

"(iv) certified nurse-midwife services; and".

(2) Section 1833(a)(1) of such Act (42 U.S.C. 1395k(a)(1)) is amended—

(A) by striking "and" at the end of clause (F);

(B) by striking "services; and" in clause (G) and inserting "services,"; and

(D) by adding at the end thereof the following: "and (I) with respect to certified nurse-midwife services under sec-

tion 1861(s)(2)(L), the amounts paid shall be the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph (but in no event more than 65 percent of the prevailing charge that would be allowed for the same service performed by a physician);".

(3) Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(m) In the case of certified nurse-midwife services for which payment may be made under this part only pursuant to section 1861(s)(2)(L), payment may only be made under this part for such services on an assignment-related basis.".

(c) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Certified Nurse-Midwife Services

"(ff)(1) The term 'certified nurse-midwife services' means such services furnished by a certified nurse-midwife (as defined in paragraph (2)) and such services and supplies furnished as an incident to his service which the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician's service.

"(2) The term 'certified nurse-midwife' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies throughout the maternity cycle.".

(c) CONFORMING CHANGES.—

(1) Section 1905(a)(17) of such Act (42 U.S.C. 1396d(a)(17)) is amended by striking "as defined in subsection (m)" and inserting "as defined in section 1861(ff)".

(2) Section 1905 of such Act (42 U.S.C. 1396d) is amended by striking subsection (m).

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after July 1, 1988.

SEC. 4074. COVERAGE OF SOCIAL WORKER SERVICES FURNISHED BY A HEALTH MAINTENANCE ORGANIZATION TO ITS MEMBERS.

(a) IN GENERAL.—Section 1861(s)(2)(H)(ii) of the Social Security Act (42 U.S.C. 1395x(s)(2)(H)(ii)) is amended—

(1) by inserting "or by a clinical social worker (as defined in subsection (ff))" after "clinical psychologist (as defined by the Secretary)"; and

(2) by striking "incident to his services" and inserting "incident to such clinical psychologist's services or clinical social worker's services".

(b) CLINICAL SOCIAL WORKER DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Clinical Social Worker

"(ff) The term 'clinical social worker' means an individual who—

"(1) possesses a master's or doctor's degree in social work;

"(2) after obtaining such degree has performed at least 2 years of supervised clinical social work; and

"(3)(A) is licensed or certified as a clinical social worker by the State in which the services are performed, or

"(B) in the case of an individual in a State which does not provide for licensure or certification—

"(i) has completed at least 2 years or 3,000 hours of post-master's degree supervised clinical social work practice under the supervision of a master's level social worker in an appropriate setting (as determined by the Secretary), and

"(ii) meets such other criteria as the Secretary establishes.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after January 1, 1988.

SEC. 4075. CLARIFICATION OF COVERAGE OF DRUGS USED IN IMMUNOSUPPRESSIVE THERAPY.

(a) IN GENERAL.—Section 1861(s)(2)(J) of the Social Security Act (42 U.S.C. 1395x(s)(2)(J)) is amended by striking "immunosuppressive drugs" and inserting "prescription drugs used in immunosuppressive therapy".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to drugs dispensed on or after the date of the enactment of this Act.

SEC. 4076. SERVICES OF A PHYSICIAN ASSISTANT.

(a) SERVICES COVERED.—Section 1861(s)(2)(K) of the Social Security Act (42 U.S.C. 1395x(s)(2)(K)) is amended by inserting ", in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area," after "1905(c))".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after January 1, 1989.

SEC. 4077. PSYCHOLOGIST SERVICES IN CLINICS.

(a) COVERAGE OF PSYCHOLOGISTS' SERVICES FURNISHED AT RURAL HEALTH CLINICS.—

(1) Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking "physician assistant or by a nurse practitioner" and inserting "physician assistant or a nurse practitioner (as defined in paragraph (3)), or by a clinical psychologist (as defined by the Secretary),".

(2) The amendment made by paragraph (1) shall be effective with respect to services furnished on or after the date of enactment of this Act.

(b) DIRECT PAYMENT FOR PSYCHOLOGISTS' SERVICES FURNISHED AT A COMMUNITY MENTAL HEALTH CENTER.—

(1) Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended, is amended—

(A) by striking "and" at the end of subparagraph (K);

(B) by adding "and" at the end of subparagraph (L); and

(C) by adding at the end thereof the following new subparagraph:

"(M) qualified psychologist services;".

(2) Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the semicolon in clause (iii) and inserting a comma; and

(C) by adding at the end thereof the following new clause: "(iv) qualified psychologist services; and".

(3) Section 1833(a)(1) of such Act (42 U.S.C. 1395k(a)(1)) is amended—

(A) by striking "and" at the end of subparagraph (G);

(B) by striking "services; and" in subparagraph (H) and inserting "services,";

(C) by adding "and" at the end of subparagraph (I); and

(D) by adding at the end thereof the following new subparagraph: "(J) with respect to qualified psychologist services under section 1861(s)(2)(M), the amounts paid shall be the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph;".

(4) The subsection added by section 4073(b)(3) of this subpart is amended by inserting "and in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1861(s)(2)(M)" after "1861(s)(2)(L)".

(5) Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Qualified Psychologist Services

"(gg) The term 'qualified psychologist services' means such services and such services and supplies furnished as an incident to his service furnished by a clinical psychologist (as defined by the Secretary) at a community mental health center (as such term is used in the Public Health Service Act) which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician's service.

(5) The amendments made by this subsection shall be effective with respect to services performed on or after July 1, 1988.

SEC. 4078. PROVISION OF OFFSITE COMPREHENSIVE OUTPATIENT REHABILITATION SERVICES.

Section 1861(cc)(1) of the Social Security Act (42 U.S.C. 1395x(cc)(1)) is amended by adding at the end thereof the following: "In the case of physical therapy, occupational therapy, and speech pathology services, there shall be no requirement that the item or service be furnished at any single fixed location if the item or service is furnished pursuant to such plan and payments are not otherwise made for the item or service under this title.".

SEC. 4079. DEMONSTRATION PROJECTS TO PROVIDE PAYMENT ON A PREPAID, CAPITATED BASIS FOR COMMUNITY NURSING AND AMBULATORY CARE FURNISHED TO MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with not less than four eligible organizations submitting applications under this section to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nurs-

ing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization (in accordance with subsection (c)(2)).

(b) DEFINITIONS OF COMMUNITY NURSING AND AMBULATORY CARE AND ELIGIBLE ORGANIZATION.—As used in this section:

(1) The term "community nursing and ambulatory care" means the following services:

(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

(B) Physical, occupational, or speech therapy.

(C) Social and related services supportive of a plan of ambulatory care.

(D) Part-time or intermittent services of a home health aide.

(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s) of the Social Security Act.

(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act.

(H) Certain other related services listed in section 1915(c)(4)(B) of such Act to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

(2) The term "eligible organization" means a public or private entity, organized under the laws of any State, which meets the following requirements:

(A) The entity (or a division or part of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

(B) The entity provides directly, or through arrangements with other qualified personnel, the services described in paragraph (1).

(C) The entity provides that all nursing care (including services of home health aids) is furnished by or under the supervision of a registered nurse.

(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

(E) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses in cooperation with (as appropriate) other professionals.

(F) The entity maintains clinical records on all patients.

(G) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

(H) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

(I) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2) of the Social Security Act.

(c) AGREEMENTS WITH ELIGIBLE ORGANIZATIONS TO CONDUCT DEMONSTRATION PROJECTS.—

(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization meets the requirements of this subsection and subsection (d) with respect to members enrolled with the organization under this section.

(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

(3) The organization must provide to members enrolled with the organization under this section, through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act, community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

(5) Section 1876(c)(5) of the Social Security Act shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

(7) Under a demonstration project under this section—

(A) the Secretary could require the organization to provide financial or other assurances (including financial risk-sharing) that minimize the inappropriate substitution of other services under title XVIII of such Act for community nursing services; and

(B) if the Secretary determines that the organization has failed to perform in accordance with the requirements of the project (including meeting financial responsibility requirements under the project, any pattern of disproportionate or inappropriate institutionalization) the Secretary shall, after notice, terminate the project.

(d) DETERMINATION OF PER CAPITA PAYMENT RATES.—

(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested parties) not later than three months before the beginning of such period, with respect to each eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization who are entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act.

(2)(A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

(D) For purposes of subparagraph (C), the term 'adjusted average per capita cost' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections 1816 and 1842 of such Act), if the services were to be furnished by other than an eligible organization.

(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

(4)(A) In the case of an eligible organization conducting a demonstration project under this section, the Secretary shall make monthly payments in advance and in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization.

(B) The amount of payment under paragraph (2) or (3) may be retroactively adjusted to take into account any difference be-

tween the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other individual or person) shall be entitled to receive payments from the Secretary under this title for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

(e) RESTRICTION ON PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND COINSURANCE.—

(1) In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act).

(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act.

(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

(5) Section 1876(e)(4) of the Social Security Act shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

(f) COMMENCEMENT AND DURATION OF PROJECTS.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

(g) REPORT.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.

SEC. 4080. PART B PREMIUM.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (e), by striking "1989" each place it appears and inserting in lieu thereof "1990";

(2) in subsection (f)(1), by striking "or 1987" and inserting in lieu thereof "1987, or 1988"; and

(3) in subsection (f)(2), by striking "or 1988" and inserting in lieu thereof "1988, or 1989".

Subpart D—Other Provisions

SEC. 4081. SUBMISSION OF CLAIMS TO SUPPLEMENTAL INSURANCE CARRIERS.

(a) IN GENERAL.—Section 1842(h)(3) of the Social Security Act (42 U.S.C. 1395u(h)(3)) is amended by inserting "(A)" after "(3)" and by adding at the end the following new subparagraph:

"(B) The Secretary shall establish a procedure whereby an individual enrolled under this part may assign, in an appropriate manner on the form claiming a benefit under this part for an item or service furnished by a participating physician or supplier, the individual's rights of payment under a medicare supplemental policy (described in section 1882(g)(1)) in which the individual is enrolled. In the case such an assignment is properly executed and a claims determination is made by a carrier with a contract under this section, the carrier shall transmit to the private entity issuing the medicare supplemental policy notice of such fact and including such information as the Secretary determines is generally provided to enable the entity to decide whether (and the amount of) any payment is due under the policy. The Secretary may enter into arrangements for the transmittal of such information to entities electronically. The Secretary shall impose user fees for the transmittal of information under this subparagraph, whether electronically or otherwise.".

(b) MEDIGAP POLICY STANDARDS.—Section 1882 of such Act (42 U.S.C. 1395ss) is amended—

(1) in subsection (b)(1)—

(A) by amending subparagraph (B) to read as follows:

"(B) includes requirements equal to or more stringent than the requirements described in paragraphs (2) and (3) of subsection (c);",

(B) by adding "and" at the end of subparagraph (C), and

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

"(D) provides the Secretary periodically (but at least annually) with a list containing the name and address of the issuer of each such policy and the name and number of each such policy (including an indication of policies that have been previously approved, newly approved, or withdrawn from approval since the previous list was provided),";

(2) in subsection (c)—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting "; and", and

(C) by inserting after paragraph (2) the following new paragraph:

"(3)(A) accepts a notice under section 1842(h)(3)(B) as a claims form for benefits under such policy in lieu of any claims form otherwise required and agrees to make a payment determination on the basis of the information contained in such claims form;

"(B) where such a notice is received—

"(i) provides notice to such physician or supplier and the beneficiary of the payment determination, and

"(ii) provides any appropriate payment directly to the participating physician or supplier involved;

"(C) provides each enrollee at the time of enrollment a card listing the policy name and number and a single mailing address to which notices under section 1842(h)(3)(B) respecting the policy are to be sent;

"(D) agrees to pay any user fees established under section 1842(h)(3)(B) with respect to information transmitted to the issuer of the policy; and

"(E) provides to the Secretary at least annually, for transmittal to carriers, a single mailing address to which notices under section 1842(h)(3)(B) respecting the policy are to be sent.".

(c) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to contracts with carriers for claims for items and services furnished by participating physicians and suppliers on or after January 1, 1989.

(2)(A) The amendments made by subsection (b) shall apply to medicare supplemental policies as of January 1, 1989 (or, if applicable, the date established under subparagraph (B)).

(B) In the case of a State which the Secretary of Health and Human Services identifies as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medical supplemental policies to be changed to meet the requirements of section 1882(c)(3) of the Social Security Act, and

(ii) having a legislature which is not scheduled to meet in 1988 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered.

SEC. 4082. REVISION OF PART B HEARINGS.

(a) CLARIFICATION OF OBRA AMENDMENT.—Section 1869(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ff(b)(3)(B)) is amended by striking "chapter 5" and inserting "section 553".

(b) EXPEDITED ADMINISTRATIVE HEARING WHERE ONLY ISSUES OF LAW.—Section 1869(b) of such Act (42 U.S.C. 1395ff(b)) is amended by adding at the end the following new paragraph:

"(5) In an administrative hearing pursuant to paragraph (1), where the moving party alleges that there are no material issues of fact in dispute, the administrative law judge shall make an expedited determination as to whether any such facts are in dispute and, if not, shall determine the case expeditiously.".

(c) TIMELY CARRIER HEARINGS ON PART B APPEALS.—Section 1842(b)(5) of such Act (42 U.S.C. 1395u(b)(5)) is amended—

(1) by inserting "(A)" after "(5)", and

(2) by adding at the end the following new subparagraph:

"(B) The Secretary shall establish standards for evaluating carriers' performance of reviews of initial carrier determinations and of

fair hearings under paragraph (3)(C), under which a carrier is expected—

"(i) to complete such reviews, within 45 days after the date of a request by an individual enrolled under this part for such a review, in 95 percent of such requests, and

"(ii) to make a final determination, within 120 days after the date of receipt of a request by an individual enrolled under this part for a fair hearing under paragraph (3)(C), in 90 percent of such cases.".

(d) GAO STUDY.—The Comptroller General shall conduct a study concerning the cost effectiveness of requiring hearings with a carrier under part B of title XVIII of the Social Security Act before having a hearing before an administrative law judge respecting carrier determinations under that part. The Comptroller General shall report to the Congress on the results of such study by not later than June 30, 1989.

(e) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to requests for hearings filed after the end of the 60-day period beginning on the date of the enactment of this Act.

(3) The amendments made by subsection (c) shall apply to evaluation of performance of carriers under contracts entered into or renewed on or after October 1, 1988.

SEC. 4083. PROVISIONS RELATING TO PHYSICIAN PAYMENT REVIEW COMMISSION.

(a) REVISION OF APPOINTMENT PROCESS FOR THE PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) IN GENERAL.—Section 1845(a) of Social Security Act (42 U.S.C. 1395w-1(a)(3)) is amended—

(A) in paragraph (1), by striking "with expertise in the provision and financing of physicians' services" and inserting "with national recognition for their expertise in health economics, physician reimbursement, medical practice, and other related fields"; and

(B) in paragraph (3), by striking the last sentence.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to appointments made after the date of the enactment of this Act.

(b) TREATMENT OF EMPLOYEES FOR CERTAIN PURPOSES.—

(1) IN GENERAL.—Section 1886(e)(6)(D) of the Social Security Act (42 U.S.C. 1395ww(e)(6)(D)) is amended by adding at the end the following: "For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(c) CHANGE IN DATE FOR ANNUAL REPORT OF PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) Section 1845(b)(1) of such Act (42 U.S.C. 1395w-1(b)(1)) is amended by striking "March 1" and inserting "March 31".

(2) The amendment made by paragraph (1) shall apply with respect to reports for years after 1987.

SEC. 4084. TECHNICAL AMENDMENTS RELATED TO CERTIFIED REGISTERED NURSE ANESTHETISTS.

(a) IN GENERAL.—Section 1833(l) of the Social Security Act (42 U.S.C. 1395l(l)), as added by section 9320(e) of the Omnibus Budget Reconciliation Act of 1986, is amended—

(1) in paragraph (2), by striking "1985" and inserting "1985 and such other data as the Secretary determines necessary"; and

(2) in paragraph (5)(A), by striking "or group practice" each place it appears and inserting "group practice, or ambulatory surgical center".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4085. MISCELLANEOUS AND TECHNICAL PROVISIONS.

(a) PROMPT SUBMITTAL OF DATA BY SECRETARY.—Section 1845 of the Social Security Act (42 U.S.C. 1395w-1) is amended by adding at the end the following new subsection:

"(f)(1) Not later than October 1st of each year (beginning with 1988), the Secretary shall transmit to the Physician Payment Review Commission, to the Congressional Budget Office, and to the Congressional Research Service of the Library of Congress national data (known as the Part B Medicare Annual Data System) for the previous year respecting part B of this title.

"(2) In order to ensure that the data are available for transmittal under paragraph (1) on a timely basis, the Secretary shall require, in the standards and criteria established under section 1842(b)(2), that carriers submit data for a year under the system referred to in paragraph (1) not later than July 1st of the following year.

"(3) The Secretary, in consultation with the Physician Payment Review Commission, the Congressional Budget Office, and the Congressional Research Service of the Library of Congress, shall establish and annually revise standards for the data reporting system described in paragraph (1).

"(4) The Secretary shall also provide to the entities described in paragraph (1) additional data respecting the program under this part as may be reasonably requested by them on an agreed-upon schedule.

"(5) The Secretary shall develop, in consultation with the Physician Payment Review Commission, the Congressional Budget Office, and the Congressional Research Service of the Library of Congress, a system for providing to each of such entities on a quarterly basis summary data on aggregate expenditures under this part by type of service and by type of provider. Such data shall be provided not later than 90 days after the end of each quarter (for quarters beginning with the calendar quarter ending on March 31, 1989).".

(b) CLARIFICATION OF PENALTIES FOR UNASSIGNED LABORATORY SERVICES.—

(1) IN GENERAL.—Section 1833(h)(5) of the Social Security Act (42 U.S.C. 1395l(h)(5)) is amended by adding at the end the following new subparagraph:

"(D) If a person knowingly and willfully and on a repeated basis bills an individual enrolled under this part for charges for a clinical diagnostic laboratory test for which payment may only be made on an assignment-related basis under subparagraph (C), the Secretary may apply sanctions against the person in the same manner as the Secretary may apply sanctions against a physician in accordance with section 1842(j)(2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to procedures performed on or after January 1, 1988.

(c) EXTENSION OF MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.—Section 9204(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9339(e) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "January 1, 1988" and inserting "January 1, 1989".

(d) PROMPT PAYMENT FOR COMPREHENSIVE OUTPATIENT REHABILITATION FACILITIES.—

(1) Section 1816(c)(2)(C) of the Social Security Act (42 U.S.C. 1395h(c)(2)(C)) is amended by striking "or hospice program" and inserting "hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency".

(2)(A) The amendment made by paragraph (1) shall apply to claims received on or after the date of enactment of this Act.

(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816, and regulations, to such extent as may be necessary to implement the amendment made by paragraph (1).

(e) CAPACITY TO SET GEOGRAPHIC PAYMENT LIMITS.—The Secretary of Health and Human Services shall develop the capability to implement (for services furnished on or after January 1, 1989) geographic limits on charges and payments under part B of title XVIII of the Social Security Act for physicians' services based on statewide, regional, or national average (or percentile in a distribution) of prevailing charges or payment amounts (weighted by frequency of services). Any such limits shall take into account adjustments for geographic differences in cost of practice and cost of living.

(f) DELAY IN EFFECTIVE DATE FOR ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM.—Section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "July 1, 1987" and inserting "October 1, 1988".

(g) DATE FOR APPLYING CIVIL PENALITIES FOR IMPROPER USE OF ASSISTANTS IN PERFORMING CATARACT SURGERY.—

(1) Section 1842(k) of the Social Security Act (42 U.S.C. 1395u(k)) is amended in paragraphs (1) and (2) by striking "(j)(2)" each place it appears and inserting "(j)(2) in the case of surgery performed on or after March 1, 1987".

(2) The amendment made by paragraph (1) shall be effective as if included in section 9307(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(h) UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS.—

(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physician groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation

hospitals and rehabilitative units (and patients in long-term care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act in performing functions under subsection (a) of such section related to the utilization practices of physicians in such hospitals and units.

(2) Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1).

(i) TECHNICAL AMENDMENTS.—

(1) Section 1833(a) of the Social Security Act (42 U.S.C. 1395l(a)) is amended—

(A) in paragraphs (1)(D)(i) and (2)(D)(i), by striking, "on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1)," and inserting "on an assignment-related basis";

(B) in paragraph (1), by striking "and" before "(G)"; and

(C) in subsection (b)(3)(A), by striking "on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1)" and inserting "on an assignment-related basis".

(2) Section 1833(h)(1)(C) of such Act (42 U.S.C. 1395l(h)(1)(C)) is amended by inserting before the period the following: ", and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis".

(3) Section 1833(h)(5)(A) of such Act (42 U.S.C. 1395l(h)(5)(A)) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end the following new clause:

"(iii) in the case of a clinical diagnostic laboratory test provided under an arrangement (as defined in section 1861(w)(1)) made by a hospital, payment shall be made to the hospital.".

(4) Section 1835(a)(2)(C) of such Act (42 U.S.C. 1395n(a)(2)(C)) is amended by striking the second comma at the end of clause (i).

(5) Section 1842(b)(3)(C) of such Act (42 U.S.C. 1395u(b)(3)(C)) is amended by striking "not more than" and inserting "less than".

(6) Section 1842(h)(5) of such Act (42 U.S.C. 1395u(h)(5)) is amended by striking "the" before "participation".

(7) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 1842(j)(1) of the Social Security Act (42 U.S.C. 1395u(j)(1)) is amended—

(A) in subparagraph (C)(i), by inserting "maximum allowable" after "If the physician's",

(B) in subparagraph (C)(v), by striking "1987" and insert "1986", and

(C) by adding at the end of subparagraph (C) the following new clause:

"(vii) In the case of a nonparticipating physician who was a participating physician during a previous period, for the purpose of computing the physician's maximum allowable actual charge

during the physician's period of nonparticipation, the physician shall be deemed to have had a maximum allowable actual charge during the period of participation, and such deemed maximum allowable actual charge shall be determined accordingly to clauses (i) through (vi).".

(8) Paragraph (4) of section 1845(e) of the Social Security Act (42 U.S.C. 1395w-1(e)) is amended by moving the alignment of each of its provisions (including any clauses therein) 2 ems to the left.

(9) Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by striking the comma before "anesthesia" and inserting "and" and by striking "certified" the second place it appears.

(10) The heading of subsection (g) of section 1861 of such Act (42 U.S.C. 1395x) is amended to read as follows:

"Outpatient Occupational Therapy Services".

(11) Section 1861(s) of such Act (42 U.S.C. 1395x(s)), as amended by section 9367(a) of this Act, is amended by striking "which—" before paragraph (15) and all that follows through the end of paragraph (16) and inserting the following: "which would not be included under subsection (b) if it were furnished to an inpatient of a hospital.".

(12) Section 1861(v)(5)(A) of such Act (42 U.S.C. 1395x(v)(5)(A)) is amended by striking "section 1861(p)" and "section 1861(g)" and inserting "subsection (p)" and "subsection (g)", respectively.

(13) The heading of subsection (bb) of section 1861 of such Act (42 U.S.C. 1395x) is amended to read as follows:

"Services of a Certified Registered Nurse Anesthetist".

(14) The heading of subsection (ee) of section 1861 of such Act (42 U.S.C. 1395x) is amended to read as follows:

"Discharge Planning Process".

(15) Section 1862(a)(1)(A) of such Act (42 U.S.C. 1395y(a)(1)(A)) is amended by striking "or (D)" and inserting "(D), or (E)".

(16) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by striking "an patient" and inserting "a patient".

(17) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 1866(g) of the Social Security Act (42 U.S.C. 1395cc(g)) is amended by striking "for a hospital outpatient service" and all that follows through "subsection (a)(1)(H)" and inserting "inconsistent with an arrangement under subsection (a)(1)(H) or in violation of the requirement for such an arrangement".

(18) Section 1869(a) of the Social Security Act (42 U.S.C. 1395ff(a)) is amended by inserting "or a claim for benefits with respect to home health services under part B" before "shall".

(19) Section 1869(b)(2) of such Act (42 U.S.C. 1395ff(b)(2)) is amended by inserting "and (1)(D)" after "paragraph (1)(C)" each place it appears.

(20) Section 1875(c)(3)(B) of such Act (42 U.S.C. 1395ll(c)(3)(B)) is amended by striking "years 1987" and inserting "year 1987".

(21) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986—

(A) section 9313(d)(3) of such Act is amended by striking "2 years after the date of the enactment of this Act" and inserting "January 1, 1990";

(B) section 9332(a)(3) of such Act is amended by inserting before the period at the end the following: "or in increasing the proportion of total payments for physicians' services which are payments for such services rendered by participating physicians";

(C) section 9335(j)(2) of such Act is amended by inserting before the period at the end the following: "except that, until network administrative organizations are established under section 1881(c)(1)(A) of the Social Security Act (as amended by subsection (d)(1) of this section), the distribution of payments described in the last sentence of section 1881(b)(7) of such Act shall be made based on the distribution of payments under section 1881 of such Act to network administrative organizations for fiscal year 1986"; and

(D) section 9343 of such Act is amended—

(i) amending subparagraph (A) of subsection (e)(2) to read as follows:

"(2)(A) Section 1833 (42 U.S.C. 1395l) is amended—

"(i) in subsection (a)(1)(F), by striking '(i)(3)' and inserting '(i)(4)', and

"(ii) in subsection (b)(3), by striking 'or under subsection (i)(2) or (i)(4)'.";

(ii) in subsection (h)(2), by striking "(d)" and inserting "(c)" and by adding at the end the following: "The amendments made by subsection (c) shall apply to services furnished after June 30, 1987."; and

(iii) in subsection (h)(4), by striking "(c)" and inserting "(d)".

PART 4—PEER REVIEW ORGANIZATIONS

SEC. 4091. CONTRACT PROVISIONS.

(a) EXTENSIONS OF PEER REVIEW CONTRACT PERIOD.—

(1) ONE-TIME EXTENSIONS TO PERMIT STAGGERING OF EXPIRATION DATES.—

(A) IN GENERAL.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review organizations under part B of title XI of the Social Security Act and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act, the Secretary may provide for extensions of existing contracts, but the total of such extensions may not exceed 24 months for any contract.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to renewals occurring on or after the date of the enactment of this Act.

(2) 3-YEAR CONTRACT PERIOD.—

(A) Section 1153(c)(3) of such Act (42 U.S.C. 1320c-2(c)(3)) is amended by striking "two" and "biennial" and inserting "three" and "triennial", respectively.

(B) The amendment made by subparagraph (A) shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act.

(b) CONTRACT REQUIREMENTS.—

(1) Section 1153 of the Social Security Act (42 U.S.C. 1320c-2) is amended by adding at the end the following new subsection:

"(h)(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects substantially the performance of contract obligations under this section not less than 30 days before the date on which such policy or procedure is to take effect. This paragraph shall not apply to the extent it is inconsistent with a statutory deadline.

"(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

"(3) The Secretary shall regularly furnish each peer review organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.".

(2) Section 1153(e) of such Act (42 U.S.C. 1320c-2(e)) is amended—

(A) by inserting "(1)" after "(e)";

(B) by striking "Contracting" and inserting "Except as provided in paragraph (2), contracting"; and

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

"(2) If a peer review organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the organization, the Secretary shall, before requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.".

(3) The amendments made by paragraphs (1) and (2) shall become effective on the date of enactment of this Act.

SEC. 4092. PREFERENCE IN CONTRACTING WITH IN-STATE ORGANIZATIONS.

(a) IN GENERAL.—Section 1153 of the Social Security Act (42 U.S.C. 1320c-2), as amended by section 4091(b)(1) of this part, is further amended by adding at the end the following new subsection:

"(i)(1) Notwithstanding any other provision of this section, the Secretary shall not renew a contract with any organization that is not an in-State organization (as defined in paragraph (3)) unless the Secretary has first complied with the requirements of paragraph (2).

"(2)(A) Not later than six months before the date on which a contract period ends with respect to an organization that is not an in-State organization, the Secretary shall publish in the Federal Register—

"(i) the date on which such period ends; and

"(ii) the period of time in which an in-State organization may submit a proposal for the contract ending on such date.

"(B) If one or more qualified in-State organizations submits a proposal within the period of time specified under subparagraph (A)(ii), the Secretary shall not automatically renew the current contract on a noncompetitive basis, but shall provide for competition for the contract in the same manner as a new contract under subsection (b).

"(3) For purposes of this subsection, an in-State organization is an organization that has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation the headquarters of which is located in such State).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act.

SEC. 4093. REQUIRING REASONABLE NOTICE AND OPPORTUNITY FOR DISCUSSION PRIOR TO DENIAL OF CLAIM.

(a) IN GENERAL.—Section 1154(a)(3) of the Social Security Act (42 U.S.C. 1320c-3(a)(3)) is amended to read as follows:

"(3)(A) Subject to subparagraph (B), whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such patient and the agency or organization responsible for the payment of claims under title XVIII of this Act of such determination.

"(B) The notification under subparagraph (A) shall not occur until 20 days after the date that the organization has—

"(i) made a preliminary notification to such practitioner or provider of such proposed determination, and

"(ii) provided such practitioner or provider an opportunity for discussion and review of the proposed determination.

The discussion and review conducted under subparagraph (B)(ii) shall not affect the rights of a practitioner or provider to a formal reconsideration of a determination under this part (as provided under section 1155).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to determinations made on or after April 1, 1988.

SEC. 4094. PEER REVIEW NORMS AND EDUCATION.

(a) STANDARDS APPLIED BY PROS.—Section 1154(a)(6) of the Social Security Act (42 U.S.C. 1320c-3(a)(6)) is amended by adding after and below subparagraph (B) thereof the following:

"As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's resi-

dence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.".

(b) ON-SITE REVIEW.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)) is amended by adding at the end the following new paragraph:

"(15) During each year of the contract entered into under section 1153(b), the organization shall perform significant on-site review activities, including on-site review at at least 20 percent of the rural hospitals in the organization's area.".

(c) REPORTS TO PROVIDERS AND EDUCATIONAL ACTIVITIES.—

(1)(A) Section 1154(a)(6) such Act (42 U.S.C. 1320c-3(a)(6)) is amended—

(i) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(ii) by inserting "(A)" after "(6)", and

(iii) by adding at the end the following:

"(B) The organization shall—

"(i) offer to provide, several times each year, for a physician representing the organization to meet (at a hospital or at a regional meeting) with medical and administrative staff of each hospital (the services of which are reviewed by the organization) respecting the organization's review of the hospital's services for which payment may be made under title XVIII, and

"(ii) publish (not less often than annually) and distribute to providers and practitioners whose services are subject to review a report that describes the organization's findings with respect to the types of cases in which the organization has frequently determined that (I) inappropriate or unnecessary care has been provided, (II) services were rendered in an inappropriate setting, or (III) services did not meet professionally recognized standards of health care.".

(B) The amendments made by subparagraph (A) shall apply to contracts under part B of title XI of the Social Security Act entered into or renewed more than 6 months after the date of the enactment of this Act.

(2)(A) Section 1154(a)(4)(B) of the Social Security Act (42 U.S.C. 1320c-3(a)(4)(B)) is amended—

(i) by inserting before the period at the end of the first sentence the following: "and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1876, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of

the individual under such system, and of the method and purposes for contacting the organization"; and

(ii) by striking "previous sentence" and inserting "previous two sentences".

(B) Section 1154(a)(7)(A) of such Act (42 U.S.C. 1320c-3(a)(7)(A)) is amended—

(i) by inserting "(i)" after "(A)",

(ii) by striking the semicolon and inserting "; and", and

(iii) by adding at the end thereof the following new clause:

"(ii) in the case of psychiatric and physical rehabilitation services, make arrangements to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate).".

(C) The amendments made by this paragraph shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act.

(d) PEER REVIEW EMPHASIS ON EDUCATIONAL ACTIVITIES. —

(1) Section 1153(c) of such Act (42 U.S.C. 1320c-2(c)) is amended by adding after and below paragraph (8) the following: "In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.".

(2) The amendment made by paragraph (1) shall apply to contracts under part B of title XI of the Social Security Act as of January 1, 1988.

(e) TELECOMMUNICATIONS DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasability of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title. Under such demonstration projects, the Secretary may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.

SEC. 4095. PREEXCLUSION HEARINGS.

(a) IN GENERAL.—Section 1156(b) of the Social Security Act (42 U.S.C. 1320c-5(b)) is amended by adding at the end the following new paragraph:

"(5) Before the Secretary may effect an exclusion under paragraph (2) in the case of a provider or practitioner located in a rural health manpower shortage area (HMSA) or in a county with a population of less than 70,000, the provider or practitioner adversely affected by the determination is entitled to a hearing before an administrative law judge (described in section 205(b)) respecting whether the provider or practitioner should be able to continue furnishing services

to individuals entitled to benefits under this Act, pending completion of the administrative review procedure under paragraph (4). If the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to such individuals if permitted to continue furnishing such services, the Secretary shall not effect the exclusion under paragraph (2) until the provider or practitioner has been provided reasonable notice and opportunity for an administrative hearing thereon under paragraph (4).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to determinations made by the Secretary of Health and Human Services under section 1156(b) of the Social Security Act on or after the date of the enactment of this Act.

(c) TRANSITION FOR CURRENT CASES.—In the case of a practitioner or person—

(1) for whom a notice of determination under section 1156(b) of the Social Security Act has been provided within 365 days before the date of the enactment of this Act,

(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection, the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

(d) REDETERMINATIONS IN CERTAIN CASES.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of section 1156(b) of such Act until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.

(e) REPORT ON IMPROVEMENTS IN PROCEDURES FOR IMPOSING SANCTIONS.—Not later than one year after the date of enactment of this Act, the Secretary of Health and Human Services shall report to Congress on the improved procedures for imposing sanctions against a practitioner or person under section 1156 of the Social Security Act established through agreement by the Health Care Financing Administration, the American Association of Retired Persons, the American Medical Association, and the Office of the Inspector General in the Department of Health and Human Services. The report shall set forth such improved procedures, describe the response of physicians and providers to the procedures, assess whether the procedures effect an appropriate balance between procedural fairness and the need for ensuring quality medical care, comment on the alternative provider-patient notification procedure contained in the agreement, and recommend whether such procedures should apply to institutional providers of health care services.

SEC. 4096. LIMITATION OF BENEFICIARY LIABILITY FOR SERVICES DISALLOWED BY PEER REVIEW ORGANIZATIONS.

(a) PART B SERVICES.—

(1) Section 1842 of the Social Security Act (42 U.S.C 1395u) is amended—

(A) in subsection (b)(3)(ii), by inserting "(and to refund amounts already collected)" after "agrees not to charge", and by striking "and (II)" and inserting ", (II) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for services for which payment under this title is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B), and (III)";

(B) in subsection (l)(1)(A)(iii), by inserting "(I)" after "(iii)" and by inserting before the comma the following: "or (II) payment under this title for such services is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B)"; and

(C) in subsection (l)(1)(C), by inserting "in the case described in subparagraph (A)(iii)(I)" after "to an individual".

(2) Section 1870(f) of such Act (42 U.S.C. 1395gg(f)) is amended by striking "that the reasonable charge is the full charge for the services" each place it appears and inserting "to the terms specified in subclauses (I) and (II) of section 1842(b)(3)(B)(ii) with respect to the services".

(b) INDEMNIFICATION.—Section 1879(b) of such Act (42 U.S.C. 1395pp(b)) is amended—

(1) in the first sentence, by striking ", subject to the deductible and coinsurance provisions of this title,", and

(2) by adding at the end the following: "No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this title.".

(c) PATIENT LIABILITY FOR HOSPITAL CHARGES DURING APPEAL OF DISCHARGE NOTICE.—

(1) Section 1154(e)(2) of such Act (42 U.S.C. 1320c-3(e)(2)) is amended by adding at the end thereof the following: "If the hospital requests such a review, it shall also notify the patient that the review has been requested.".

(2) Sections 1154(e)(3)(A)(i) (42 U.S.C. 1320c-3(e)(3)(A)(i)) and 1154(e)(3)(B) (42 U.S.C. 1320c-3(e)(3)(B)) of such Act are each amended by inserting "or (2)" after "paragraph (1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1988.

SEC. 4097. SEPARATE FUNDING LEVELS.

(a) AGGREGATE FUNDING.—Section 1866(a)(1)(F)(i)(III) of the Social Security Act (42 U.S.C. 1395cc(a)(1)(F)(i)(III)) is amended—

(1) by striking "1986" and inserting "1988"; and

(2) inserting "and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year" after "inflation".

(b) PAYMENT.—Section 1866(a)(4)(C)(ii) of such Act (42 U.S.C. 1395cc(a)(4)(C)(ii)) is amended to read as follows:

"(ii) shall not be less in the aggregate for a fiscal year—

"(I) in the case of hospitals, than the amount specified in paragraph (1)(F)(i)(III), and

"(II) in the case of facilities and agencies, than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such facilities or agencies under part B of title XI.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1988.

Subtitle B—Medicaid

PART 1—ELIGIBILITY AND BENEFITS

SEC. 4101. MEDICAID BENEFITS FOR POOR CHILDREN AND PREGNANT WOMEN.

(a) MEDICAID OPTIONAL COVERAGE FOR ADDITIONAL LOW-INCOME PREGNANT WOMEN AND CHILDREN.—

(1) Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is amended—

(A) in paragraph (2)—

(i) by striking "(2) For purposes of paragraph (1)" and inserting "(2)(A) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph",

(ii) by striking "100 percent" and inserting "185 percent", and

(iii) by adding at the end the following new subparagraph:

"(B) If a State elects, under subsection (a)(10)(A)(ii)(IX), to cover individuals not described in subparagraph (A) or (B) of paragraph (1), for purposes of that paragraph and with respect to individuals not described in such subparagraphs the State shall establish an income level which is a percentage (not more than 100 percent, or, if less, the percentage established under subparagraph (A)) of the income official poverty line described in subparagraph (A).";

(B) in paragraph (3)(D), by inserting "appropriate" after "applied is the".

(2) Section 1902(e)(4) of such Act (42 U.S.C. 1396a(e)(4)) is amended by adding at the end the following new sentence: "During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).".

(3) The amendments made by this subsection shall apply to medical assistance furnished on or after July 1, 1988.

(b) ALLOWING ACCELERATED COVERAGE OF CHILDREN UP TO AGE 5.—

(1) Section 1902(l)(1) of such Act (42 U.S.C. 1396a(l)(1)) is amended—

(A) by inserting "and" at the end of subparagraph (B), and

(B) by striking subparagraphs (C) through (F) and inserting the following:

"(C) children born after September 30, 1983, and who have attained one year of age but have not attained 2, 3, 4, or 5 years of age (as selected by the State),".

(2)(A) Section 1902(l) of such Act is further amended—

(i) in paragraph (3)(C), by striking ", (C), (D), (E), or (F)" and inserting "or (C)", and

(ii) in paragraph (4)(B)(ii), by striking ", (D), (E), or (F)".

(B) Section 1902(e)(7) of such Act (42 U.S.C. 1396a(e)(7)) is amended by striking ", (C), (D), (E), or (F)" and inserting "or (C)".

(C) Section 9401(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "(A)" after "(2)" and by striking subparagraphs (B) through (D).

(3) The amendments made by this subsection shall apply with respect to medical assistance furnished on or after July 1, 1988.

(c) COVERAGE OF CHILDREN UP TO AGE 8.—

(1) Section 1905(n)(2) of such Act (42 U.S.C. 1396d(n)(2)) is amended by striking "is under 5 years of age" and inserting "has not attained the age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)".

(2) Section 1902(l)(1)(C) of such Act, as amended by subsection (b)(1)(B), is further amended by striking "or 5 years" and inserting "5, 6, 7, or 8 years".

(3)(A) The amendments made by this subsection shall apply to medical assistance furnished on or after October 1, 1988.

(B) For purposes of section 1905(n)(2) of the Social Security Act (as amended by subsection (a)) for medical assistance furnished during fiscal year 1989, any reference to "age of 7" is deemed to be a reference to "age of 6".

(d) PREMIUM.—

(1) Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(A) in subsection (a)(1), by inserting "(except for a premium imposed under subsection (c))" before the semicolon;

(B) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(C) by inserting after subsection (b) the following new subsection:

"(c)(1) The State plan of a State may at the option of the State provide for imposing a monthly premium (in an amount that does not exceed the limit established under paragraph (2)) with respect to an individual described in subparagraph (A) or (B) of section 1902(l)(1) who is receiving medical assistance on the basis of section 1902(a)(10)(A)(ii)(IX) and whose family income (as determined in accordance with the methodology specified in section 1902(l)(3)) equals or exceeds 150 percent of the nonfarm income official poverty line

(as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(2) In no case may the amount of any premium imposed under paragraph (1) exceed 10 percent of the amount by which the family income (less expenses for the care of a dependent child) of an individual exceeds 150 percent of the line described in paragraph (1).

"(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of an individual for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

"(4) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.".

(2) The amendments made by paragraph (1) shall become effective on July 1, 1988.

(e) MISCELLANEOUS PROVISIONS RELATING TO SERVICES FOR PREGNANT WOMEN AND CHILDREN.—

(1) Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended, in subdivision (VII) of the matter following subparagraph (E), by striking "and postpartum" and inserting "postpartum, and family planning".

(2) Section 1902(e)(5) of such Act (42 U.S.C. 1396a(e)(5)) is amended by striking "until the end of the 60-day period beginning on the last day of her pregnancy" and inserting "through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends".

(3) Section 1902(l)(3)(E) of such Act (42 U.S.C. 1396a(l)(3)(E)) is amended by inserting after "title IV" the following: "(except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17))".

(4) Section 1902(l)(4)(A) of such Act (42 U.S.C. 1396a(l)(4)(A)) is amended by striking "April 17, 1986" and inserting "July 1, 1987".

(5) Section 1902(l)(4) of such Act (42 U.S.C. 1396a(l)(4)) is amended by adding at the end the following new subparagraph:

"(C) A State plan may not provide, in its election of the option of furnishing medical assistance to individuals described in paragraph (1), that such individuals must apply for benefits under part A of title IV as a condition of applying for, or receiving, medical assistance under this title.".

(6)(A) The amendment made by paragraphs (1) shall become effective on the date of enactment of this Act.

(B) The amendments made by paragraphs (2) and (3) shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(C) The amendment made by paragraph (4) shall apply to elections made on or after the enactment of this Act.

(D) The amendment made by paragraph (5) shall apply as if included in the enactment of section 9401 of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4102. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY.

(a) IN GENERAL.—

(1) Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended—

(A) by transferring subsection (d) to the end of such section and redesignating it as subsection (h), and

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

"(d)(1) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this title shall include as 'medical assistance' under such plan payment for part or all of the cost of home or community-based services (other than room and board) which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would be likely to require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan.

"(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

"(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

"(B) with respect to individuals 65 years of age or older who—

"(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

"(ii) may require such services, and

"(iii) may be eligible for such home or community-based services under such waiver,

the State will provide for an evaluation of the need for such skilled nursing facility or intermediate care facility services; and

"(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives to the provision of skilled nursing facility or intermediate care facility services, which such individuals may choose if available under the waiver.

Each State with a waiver under this subsection shall provide to the Secretary annually, consistent with a reasonable data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

"(3) A waiver granted under this subsection may include a waiver of the requirements of section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and section

1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community). Subject to a termination by the State (with notice to the Secretary) at any time, a waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under the waiver, that the maximum amount of the individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c).

"(4) A waiver under this subsection may, consistent with paragraph (2), provide medical assistance to individuals for case management services, homemaker/home health aide services and personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

"(5)(A) In the case of a State having a waiver approved under this subsection, notwithstanding any other provision of section 1903 to the contrary, the total amount expended by the State for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services under the State plan for individuals 65 years of age or older during a waiver year under this subsection may not exceed the projected amount determined under subparagraph (B).

"(B) For purposes of subparagraph (A), the projected amount under this subparagraph is the sum of the following:

"(i) The aggregate amount of the State's medical assistance under this title for skilled nursing facility services and intermediate care facility services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years beginning after the base year and ending before the waiver year involved or the sum of—

"(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the base year and the waiver year involved, plus

"(II) the percentage increase between the base year and the waiver year involved in the number of residents in the State who have attained the age of 65, plus

"(III) 2 percent for each year beginning after the base year and ending before the waiver year.

"(ii) The aggregate amount of the State's medical assistance under this title for home and community-based services for individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years beginning after the base year and ending before the waiver year involved or the sum of—

"(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of

such services) between the base year and the waiver year involved, plus

"(II) the percentage increase between the base year and the waiver year involved in the number of residents in the State who have attained the age of 65, plus

"(III) 2 percent for each year beginning after the base year and ending before the waiver year.

"(iii) The Secretary shall develop and promulgate by regulation (by not later than October 1, 1989)—

"(I) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise both skilled nursing facility services and intermediate care facility services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (i)(I);

"(II) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise home- and community-based services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (ii)(I); and

"(III) a method for projecting, on a State specific basis, the percentage increase in the number of residents in each State who are over 75 years of age for any period.

Effective on and after the date the Secretary promulgates the regulation under clause (iii), any reference in this subparagraph to the 'lesser of 7 percent' shall be deemed to be a reference to the 'greater of 7 percent'.

"(C) In this paragraph:

"(i) The term 'home- and community-based services' includes services described in sections 1905(a)(7) and 1905(a)(8), services described in subsection (c)(4)(B), services described in paragraph (4)(B), personal care services, and services furnished pursuant to a waiver under subsection (c).

"(ii)(I) Subject to subclause (II), the term 'base year' means the most recent year (ending before the date of the enactment of this subsection) for which actual final expenditures under this title have been reported to, and accepted by, the Secretary.

"(II) For purposes of subparagraph (C), in the case of a State that does not report expenditures on the basis of the age categories described in such subparagraph for a year ending before the date of the enactment of this subsection, the term 'base year' means fiscal year 1989.

"(iii) The term 'intermediate care facility services' does not include services furnished in an institution certified in accordance with section 1905(d).

"(6)(A) A determination by the Secretary to deny a request for a waiver (or extension of waiver) under this subsection shall be subject to review to the extent provided under section 1116(b).

"(B) Notwithstanding any other provision of this Act, if the Secretary denies a request of the State for an extension of a waiver under this subsection, any waiver under this subsection in effect on the date such request is made shall remain in effect for a period of not less than 90 days after the date on which the Secretary denies such

request (or, if the State seeks review of such determination in accordance with subparagraph (A), the date on which a final determination is made with respect to such review).".

(2) The amendments made by paragraph (1) shall become effective on January 1, 1988.

(b) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(10)(A)(ii)(VI) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)(VI)) is amended by striking "section 1915(c)" each place it appears and inserting "subsection (c) or (d) of section 1915".

(2) Section 1915(h) of such Act, as redesignated by subsection (a), is amended by striking "(c)" and inserting in lieu thereof "(c) or (d)".

(c) EXTENSION OF WAIVER.—In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act, which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver udner section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through September 30, 1988.

SEC. 4103. PHYSICIANS' SERVICES FURNISHED BY DENTISTS.

(a) CLARIFYING COVERAGE.—Section 1905(a)(5) of the Social Security Act (42 U.S.C. 1396d(a)(5)) is amended by inserting "(A)" after "(5)" and by inserting before the semicolon at the end the following: ", and (B) medical and surgical services furnished by a dentist (described in section 1861(r)(2)) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in subparagraph (A) if furnished by a physician (as defined in section 1861(r)(1))".

(b) EFFECTIVE DATE.—

(1) The amendment made by subsection (a) applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

SEC. 4104. OPTIONAL MEDICAID COVERAGE OF INDIVIDUALS IN CERTAIN STATES RECEIVING ONLY OPTIONAL STATE SUPPLEMENTARY PAYMENTS.

Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) by striking "or" at the end of subclause (IX) and inserting "or" at the end of subclause (X); and

(2) by adding at the end the following new subclause:

> *"(XI) who receive only an optional State supplementary payment based on need and paid on a regular basis, equal to the difference between the individual's countable income and the income standard used to determine eligibility for such supplementary payment (with countable income being the income remaining after deductions as established by the State pursuant to standards that are more restrictive than the standards for supplementary security income benefits under title XVI), which are available to all individuals in the State (but which may be based on different income standards by political subdivision according to cost of living differences), and which are paid by a State that does not have an agreement with the Secretary under section 1616 or 1634.".*

SEC. 4105. CLARIFICATION OF COVERAGE OF CLINIC SERVICES FURNISHED TO HOMELESS OUTSIDE FACILITY.

(a) IN GENERAL.—Section 1905(a)(9) of the Social Security Act (42 U.S.C. 1396d(a)(9)) is amended by inserting before the semicolon at the end the following: ", including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1988, without regard to whether regulations to implement such amendment are promulgated by such date.

SEC. 4106. MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 2-MEMBER COUPLES IN CALIFORNIA.

For purposes of section 1903(f)(1)(B) of the Social Security Act, for payments made to California on or after July 1, 1983, in the case of a family consisting only of two individuals both of whom are adults and at least one of whom is aged, blind, or disabled, the "highest amount which would ordinarily be paid to a family of the same size" under the State's plan approved under part A of title IV of such Act shall, at California's option, be the amount determined by the State agency to be the amount of the aid which would ordinarily be payable under such plan to a family which consists of one adult and two children and which is without any income or resources. Section 1902(a)(10)(C)(i)(III) of the Social Security Act shall not prevent California from establishing (under the previous sentence) an applicable income limitation for families described in that sentence which is greater than the income limitation applicable to other families, if California has an applicable income limitation under section 1903(f) of such Act which is equal to the maximum

applicable income limitation permitted consistent with paragraph (1)(B) of such section for families other than those described in the previous sentence.

PART 2—OTHER PROVISIONS

SEC. 4111. INCREASING THE MAXIMUM ANNUAL MEDICAID PAYMENTS THAT MAY BE MADE TO THE COMMONWEALTHS AND TERRITORIES.

(a) IN GENERAL.—Subsection (c) of section 1108 of the Social Security Act (42 U.S.C. 1308) is amended to read as follows:

"(c) The total amount certified by the Secretary under title XIX with respect to a fiscal year for payment to—

"(1) Puerto Rico shall not exceed (A) $73,400,000 for fiscal year 1988, (B) $76,200,000 for fiscal year 1989, and (C) $79,000,000 for fiscal year 1990 (and each succeeding fiscal year);

"(2) the Virgin Islands shall not exceed (A) $2,430,000 for fiscal year 1988, (B) $2,515,000 for fiscal year 1989, and (C) $2,600,000 for fiscal year 1990 (and each succeeding fiscal year);

"(3) Guam shall not exceed (A) $2,320,000 for fiscal year 1988, (B) $2,410,000 for fiscal year 1989, and (C) $2,500,000 for fiscal year 1990 (and each succeeding fiscal year);

"(4) the Northern Mariana Islands shall not exceed (A) $636,700 for fiscal year 1988, (B) $693,350 for fiscal year 1989, and (C) $750,000 for fiscal year 1990 (and each succeeding fiscal year); and

"(5) American Samoa shall not exceed (A) $1,330,000 for fiscal year 1988, (B) $1,390,000 for fiscal year 1989, and (C) $1,450,000 for fiscal year 1990 (and each succeeding fiscal year).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments for fiscal years beginning with fiscal year 1988.

SEC. 4112. ADJUSTMENT IN MEDICAID PAYMENT FOR INPATIENT HOSPITAL SERVICES FURNISHED BY DISPROPORTIONATE SHARE HOSPITALS.

(a) IMPLEMENTATION OF REQUIREMENT.—

(1) A State's plan under title XIX of the Social Security Act shall not be considered to meet the requirement of section 1902(a)(13)(A) of such Act (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), as of July 1, 1988, unless the State has submitted to the Secretary of Health and Human Services, by not later than such date, an amendment to such plan that—

(A) specifically defines the hospitals so described (and includes in such definition any disproportionate share hospital described in subsection (b)(1) which meets the requirement of subsection (d)), and

(B) provides, effective for inpatient hospital services provided not later than July 1, 1988, for an appropriate increase in the rate or amount of payment for such services provided by such hospitals, consistent with subsection (c).

(2)(A) In order to be considered to have met such requirement of section 1902(a)(13)(A) as of July 1, 1989, the State must submit to the Secretary of Health and Human Services by not later than such date, the State plan amendment described in paragraph (1), consistent with subsection (c).

(B) In order to be considered to have met such requirement of section 1902(a)(13)(A) as of July 1, 1990, the State must submit to the Secretary of Health and Human Services by not later than such date, the State plan amendment described in paragraph (1), consistent with subsection (c).

The Secretary shall, not later than June 30 of each year in which the State is required to submit an amendment under this subsection, review each such amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The requirement of this subsection may not be waived under section 1915(b)(4) of the Social Security Act.

(b) HOSPITALS DEEMED DISPROPORTIONATE SHARE.—

(1) For purposes of subsection (a)(1), a hospital which meets the requirement of subsection (d) is deemed to be a disproportionate share hospital if—

(A) the hospital's medicaid inpatient utilization rate (as defined in paragraph (2)) is at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State; or

(B) the hospital's low-income utilization rate (as defined in paragraph (3)) exceeds 25 percent.

(2) For purposes of paragraph (1)(A), the term "medicaid inpatient utilization rate" means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under the State plan approved under title XIX of the Social Security Act in a period, and the denominator of which is the total number of the hospital's inpatient days in that period.

(3) For purposes of paragraph (1)(B), the term "low-income utilization rate" means, for a hospital, the sum of—

(A) the fraction (expressed as a percentage)—

(i) the numerator of which is the sum (for a period) of (I) the total revenues paid the hospital for patient services under a State plan under title XIX of the Social Security Act and (II) the amount of the cash subsidies for patient services received directly from State and local governments, and

(ii) the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the period; and

(B) a fraction (expressed as a percentage)—

(i) the numerator of which is the total amount of the hospital's charges for inpatient hospital services which are attributable to charity care in a period, and

(ii) the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the hospital in the period.

The numerator under subparagraph (B)(i) shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under a State plan approved under title XIX of the Social Security Act).

(c) PAYMENT ADJUSTMENT.—In order to be consistent with this subsection, a payment adjustment for a disproportionate share hospital must either—

(1) be in an amount equal to the product of (A) the amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1886(a)(4)), and (B) the hospital's disproportionate share adjustment percentage (established under section 1886(d)(5)(F)(iv)); or

(2) provide for a minimum specified additional payment amount (or increased percentage payment) and for an increase in such a payment amount (or percentage payment) in proportion to the percentage by which the hospital's medicaid utilization rate (as defined in subsection (b)(2)) exceeds one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State;

except that, for purposes of paragraphs (2)(A) and (2)(B), the payment adjustment for a disproportionate share hospital is consistent with this subsection if the appropriate increase in the rate or amount of payment is equal to one-third of the increase otherwise applicable under subsection (c) (in the case of paragraph (2)(A)) and two-thirds of such increase (in the case of paragraph (2)(B)).

(d) REQUIREMENT TO QUALIFY AS DISPROPORTIONATE SHARE HOSPITAL.—

(1) Except as provided in paragraph (2), no hospital may be defined or deemed as a disproportionate share hospital under a State plan under title XIX of the Social Security Act or under subsection (b) of this section unless the hospital has at least 2 obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under such State plan.

(2)(A) Paragraph (1) shall not apply to a hospital—

(i) the inpatients of which are predominantly individuals under 18 years of age; or

(ii) which does not offer nonemergency obstetric services to the general population as of the date of the enactment of this Act.

(B) In the case of a hospital located in a rural area (as defined for purposes of section 1886 of the Social Security Act), in paragraph (1) the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(e) SPECIAL RULE.—A State plan shall be considered to meet the requirement of section 1902(a)(13)(A) (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs) without regard to the requirement of subsection (a) if the

plan provided for payment adjustments for disproportionate share hospitals as of January 1, 1984, and if the aggregate amount of the payment adjustments under the plan for such hospitals is not less than the aggregate amount of such adjustments otherwise required to be made under such subsection.

SEC. 4113. HMO-RELATED PROVISIONS.

(a) TREATMENT OF GARDEN STATE HEALTH PLAN.—

(1) Section 1903(m) of the Social Security Act (42 U.S.C. 1396(m)) is amended—

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

"(6)(A) For purposes of this subsection and section 1902(e)(2)(A), in the case of the State of New Jersey, the term 'contract' shall be deemed to include an undertaking by the State agency, in the State plan under this title, to operate a program meeting all requirements of this subsection.

"(B) The undertaking described in subparagraph (A) must provide—

"(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which entity may be a subdivision of the State agency administering the State plan under this title;

"(ii) for separate accounting for the funds used to operate such program;

"(iii) for setting the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this title for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population; and

"(iv) that the State agency will contract, for purposes of meeting the requirement under section 1902(a)(30)(C), with an organization or entity that under section 1154 reviews services provided by an eligible organization pursuant to a contract under section 1876 for the purpose of determining whether the quality of services meets professionally recognized standards of health care.

"(C) The undertaking described in subparagraph (A) shall be subject to approval (and annual re-approval) by the Secretary in the same manner as a contract under this subsection.

"(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1915(b).''; and

(B) in paragraph (2)(F), by striking all that precedes "a State plan may restrict" and inserting the following:

"(F) In the case of—

(i) a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii), or

"(ii) a program pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not in-

sured for benefits under part B of title XVIII or eligible for benefits under this title, and (II) (in the case of such individuals whose prepayments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any governmental entity,".

(2) Section 1902(e)(2)(A) of such Act (42 U.S.C. 1396a(e)(2)(A)) is amended by striking "section 1903(m)(2)(G)" and inserting "paragraph (2)(G) or (6) of section 1903(m)".

(b) MEDICAID MATCHING RATE FOR QUALITY REVIEW OF HMO SERVICES.—

(1) Section 1902(a)(30)(C) of such Act (42 U.S.C. 1396a(a)(30)(C)) is amended by inserting ", an entity which meets the requirements of section 1152, as determined by the Secretary," after "title XI)".

(2) Section 1902(d) of such Act (42 U.S.C. 1396a(d)) is amended—

(i) by inserting after "contracts with" the following: "an entity which meets the requirements of section 1152, as determined by the Secretary, for the performance of the quality review functions described in subsection (a)(30)(C), or", and

(ii) by striking "organization (or organizations)" each place it appears and inserting "such an entity or organization".

(3) Section 1903(a)(3)(C) of such Act (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting "or by an entity which meets the requirements of section 1152, as determined by the Secretary," after "utilization and quality control peer review organization".

(c) FREEDOM OF CHOICE.—

(1) Section 1902(a)(23) of such Act (42 U.S.C. 1396a(a)(23)) is amended—

(A) by inserting "(A)" after "Guam, provide that", and

(B) by inserting before the semicolon at the end the following: ", and (B) an enrollment of an individual eligible for medical assistance in a primary care case-management system (described in section 1915(b)(1)), a health maintenance organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1905(a)(4)(C)".

(2) Section 1902(e)(2)(A) of such Act (42 U.S.C. 1396a(e)(2)(A)) is amended by striking "but only" and inserting "but, except for benefits furnished under section 1905(a)(4)(C), only".

(3) The amendments made by this subsection shall apply to services furnished on and after July 1, 1988.

(d) TECHNICAL AMENDMENTS.—

(1) Section 1903(m)(2)(F) of such Act (42 U.S.C. 1396b(m)(2)(F)) is amended by striking "subparagraph (G)" and inserting "subparagraphs (E) or (G)".

(2) Section 1902(e)(2)(A) of such Act (42 U.S.C. 1396a(e)(2)(A)) is amended by striking "section 1903(m)(2)(G)" and inserting "subparagraph (B)(iii), (E), or (G) of section 1903(m)(2)".

(e) CONTINUED ELIGIBILITY AND RESTRICTION ON DISENROLLMENT WITHOUT CAUSE FOR METROPOLITAN HEALTH PLAN HMO.—For purposes of sections 1902(e)(2)(A) and 1903(m)(2)(F) of the Social Security Act, the Metropolitan Health Plan HMO operated by the New York City public hospitals shall be treated in the same manner as a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act).

SEC. 4114. MEDICAID WAIVER FOR HOSPICE CARE FOR AIDS PATIENTS.

Section 1905(o)(1) of the Social Security Act (42 U.S.C. 1396d(o)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking "The" and inserting "Subject to subparagraph (B), the"; and

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

"(B) For purposes of this title only, with respect to the definition of hospice program under section 1861(dd)(2), the Secretary may allow an agency or organization to make the assurance under subparagraph (A)(iii) of such section without taking into account any individual who is afflicted with acquired immunodeficiency syndrome.".

SEC. 4115. STATE DEMONSTRATION PROJECTS.

(a) EXTENSION OF ARIZONA HEALTH CARE DEMONSTRATION PROJECT.—

(1) Notwithstanding any limitations contained in section 1115 of the Social Security Act, but subject to paragraphs (2) and (3) of this subsection, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") upon application shall renew until September 30, 1989, approval of demonstration project number 11-P-98239/9-05 ("Arizona Health Care Cost Containment System—AHCCCS—A statewide approach to cost effective health care financing"), including all waivers granted by the Secretary under such section 1115 as of September 30, 1987.

(2) The Secretary's renewed approval of the project under paragraph (1) shall—

(A) subject to paragraph (3) be on the same terms and conditions that existed between the applicant and the Secretary as of September 30, 1987; and

(B) remain in effect through September 30, 1989, unless the Secretary finds that the applicant no longer complies with such terms and conditions.

(3) Nothing in this subsection shall be construed to prohibit or require the Secretary from granting additional waivers to the applicant—

(A) for coverage of additional optional groups, and

(B) for coverage of long-term care and other services which were not covered as of September 30, 1987.

(b) NEW YORK STATE PILOT PROGRAM FOR PRENATAL, MATERNITY, AND NEWBORN CARE.—

(1) Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), the State of New York (in this subsection referred to as the "State") may conduct a dem-

onstration project in accordance with this subsection for the purpose of testing its Prenatal/Maternity/Newborn Care Pilot Program (in this subsection referred to as the "Program"), as the Program is set forth in the Prenatal Care Act of 1987 (enacted by the State in February 1987), as an alternative to existing Federal programs.

(2) Under the demonstration project conducted under this subsection—

(A) any individual who receives benefits under the Program shall not receive any of such benefits under the plan of the State under title XIX of the Social Security Act; and

(B) the Secretary shall make payments to the State with respect to individuals receiving benefits under the Program in the same amounts as would be payable for such benefits under title XIX of the Social Security Act if such individuals were receiving such benefits under such title (as determined by the Secretary).

(3) The Secretary may (with respect to the demonstration project under this subsection) waive compliance with any requirement contained in section 1902(a)(1), 1902(a)(10)(B), 1902(a)(17)(D), 1902(a)(23), 1902(a)(30), or 1903(f) of the Social Security Act which (if applied) would prevent the State from carrying out the project, effectively achieving its purpose, or receiving payments in accordance with paragraph (2)(B).

(4) As a condition of approval of the demonstration project under this subsection, the State shall provide assurances satisfactory to the Secretary that—

(A) the State will continue to make benefits available under title XIX of the Social Security Act to all pregnant women entitled to receive benefits under such title to the extent such benefits are not provided under the Program; and

(B) the State has in effect a quality assurance mechanism to ensure the quality and accessability of the services furnished under the program.

(5)(A) The demonstration project under this subsection shall be conducted for a period not to exceed three years.

(B) The Secretary shall conduct an evaluation of the demonstration project under this subsection and shall report the results of such evaluation to the Congress not later than one year after completion of the project.

(c) WAIVERS FOR FAMILY INDEPENDENCE PROGRAM.—Upon approval of the demonstration project relating to the Family Independence Program in the State of Washington and with respect to such project, the Secretary of Health and Human Services shall waive compliance with any requirements of sections 1902(a)(1), 1916, and 1924 of the Social Security Act, but only to the extent necessary to enable the State to carry out the project as enacted by the State of Washington in May 1987.

SEC. 4116. WAIVER AUTHORITY UNDER THE MEDICAID PROGRAM FOR THE NORTHERN MARIANA ISLANDS.

Section 1902(j) of the Social Security Act (42 U.S.C. 1396a(j)) is amended—

(1) by inserting "and the Northern Mariana Islands" after "American Samoa" the first place it appears; and

(2) by inserting "or the Northern Mariana Islands" after "American Samoa" the second place it appears.

SEC. 4117. DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID.

The Secretary of Health and Human Services shall not, prior to July 1, 1988, implement any reductions in payments to States pursuant to section 1903(u) of the Social Security Act (or any provision of law described in subsection (c) of section 133 of the Tax Equity and Fiscal Responsibility Act of 1982).

SEC. 4118. TECHNICAL AND MISCELLANEOUS AMENDMENTS.

(a) SECTION 2176 WAIVER TECHNICALS.—

(1) Section 1915(c)(3) of the Social Security Act (42 U.S.C. 1396n(c)(3)) is amended by striking "and section 1902(a)(10)(B) (relating to comparability)" and inserting ", section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community)".

(2) The amendment made by paragraph (1) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(b) INCREASE IN NUMBER OF INDIVIDUALS WHO MAY BE SERVED UNDER MODEL HOME AND COMMUNITY-BASED SERVICES WAIVERS.— Section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) is amended by adding at the end the following new paragraph:

"(10) No waiver under this subsection shall limit by an amount less than 200 the number of individuals in the State who may receive home and community-based services under such waiver.".

(c) KATIE BECKETT TECHNICAL.—

(1) Section 1902(e)(3)(C) of such Act (42 U.S.C. 1396a(e)(3)(C)) is amended by striking "to have a supplemental security income (or State supplemental) payment made with respect to him under title XVI" and inserting "for medical assistance under the State plan under this title".

(2) The amendment made by paragraph (1) shall be effective as if it were included in section 134 of the Tax Equity and Fiscal Responsibility Act of 1982.

(d) ORGAN TRANSPLANT TECHNICAL.—

(1) Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended—

(A) in paragraph (1), by striking the period at the end and inserting "; or", and

(B) by adding at the end the following new sentence: "Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this title that are not reasonable in amount, duration, and scope to achieve their purpose.".

(2) The amendments made by paragraph (1) shall be effective as if included in the enactment of section 9507 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(e) CIVIL MONEY PENALTY AND EXCLUSION CLARIFICATIONS.—

(1) Section 1128A(a)(1) of the Social Security Act (42 U.S.C. 1320a-7(a)(1)), as amended by section 3(a)(1) of the Medicare and

Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended by striking "or has reason to know" each place it appears and inserting "or should know".

(2) Section 1128(d)(3)(B) of the such Act (42 U.S.C. 1320a-6(d)(3)(B)), as amended by section 2 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended—

(A) by inserting "(i)" after "(B)", and

(B) by adding at the end the following new clause:

"(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under a program under title XVIII.".

(3) The amendment made by paragraph (1) shall apply to activities occurring before, on, or after the date of the enactment of this Act.

(f) INCORPORATION OF CERTAIN PROVISIONS RELATING TO INDIAN HEALTH SERVICE FACILITIES.—

(1) Section 1911 of the Social Security Act (42 U.S.C. 1396j), as amended by section 4111(g)(8) of this title, is amended—

(A) by striking "or nursing facility" each place it appears and inserting ", nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan"; and

(B) by adding at the end the following new subsection:

"(c) The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.".

(2) The amendments made by paragraph (1) shall apply to health care services performed on or after the date of the enactment of this Act.

(g) FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.—

(1) Section 9412(b)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(A) in subparagraph (A), by inserting before the period at the end the following: ", including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk", and

(B) in subparagraph (B), by striking "be awarded a grant from the Robert Wood Johnson Foundation" and insert "participate in an organized initiative to replicate the findings of the On Lok long-term care demonstration project (described in section 603(c)(1) of the Social Security Amendments of 1983)".

(2) The amendments made by paragraph (1) shall take effect as though it were included in the Omnibus Budget Reconciliation Act of 1986.

(h) MEDICALLY NEEDY INCURRED EXPENSES.

(1) Section 1902(a)(17) of the Social Security Act (42 U.S.C. 1396a(a)(17)) is amended by striking "(whether in the form of insurance premiums or otherwise)" and inserting "(whether in the form of insurance premiums or otherwise and regardless of

whether such costs are reimbursed under another public program of the State or political subdivision thereof)".

(2) The amendment made by paragraph (1) shall apply to costs incurred after the date of the enactment of this Act.

(i) QUALIFICATIONS FOR CASE MANAGERS FOR INDIVIDUALS WITH DEVELOPMENT DISABILITIES AND CHRONIC MENTAL ILLNESS.—

(1) Section 1915(g)(1) of such Act (42 U.S.C. 1396n(g)(1)) is amended by adding at the end the following new sentence: "The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.".

(2) The amendment made by paragraph (1) shall take effect as though it were included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(j) HABILITATION SERVICES EFFECTIVE DATE.—Effective as if included in the enactment of section 9502 of the Consolidated Omnibus Budget Reconciliation Act of 1985, subsection (j)(1) of such section is amended by inserting before the period at the end the following: "to individuals eligible for services under a waiver granted under section 1915(c) of the Social Security Act, without regard to whether such individuals were receiving institutional services before their participation in the waiver".

(k) SECTION 2176 WAIVER FOR INSTITUTIONALIZED DEVELOPMENTALLY DISABLED.—Section 1915(c)(7) of the Social Security Act (42 U.S.C. 1396n(c)(7)) is amended by inserting "(A)" after "(7)" and adding at the end the following new subparagraph:

"(B) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with developmental disabilities who are inpatients in a skilled nursing facility or intermediate care facility and whom the State has determined, on the basis of an evaluation under paragraph (2)(B), to need the level of services provided by an intermediate care facility for the mentally retarded, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals under the State plan on the basis of the average per capita expenditures under the State plan for services to individuals who are inpatients in an intermediate care facility for the mentally retarded.".

(l) RENEWAL OF FREEDOM-OF-CHOICE WAIVERS.—

(1) Section 1915(h) of such Act (42 U.S.C. 1396n(h)) is amended by striking "denies such request in writing within 90 days after the date of its submission to the Secretary." and inserting ", within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 day of such date, denies such request.".

(2) The amendment made by paragraph (1) shall apply to requests for continuation of waivers received after the date of the enactment of this Act.

(m) REPEAL OF COORDINATED AUDIT REQUIREMENT.—

(1)(A) Section 1129 of such Act (42 U.S.C. 1320a–8) is repealed.

(B) Section 1902(a)(42) of such Act (42 U.S.C. 1396a(a)(42)) is amended—

(i) by striking "(A)", and

(ii) by striking ", (B)" and all that follows up to the semicolon at the end.

(2) The amendments made by paragraph (1) shall apply to audits conducted after the date of the enactment of this Act.

(n) TEMPORARY TECHNICAL ERROR DEFINITION.—For purposes of section 1903(u)(1)(E)(ii) of the Social Security Act, effective for the period beginning on the date of enactment of this Act and ending December 31, 1988, a "technical error" is an error in eligibility condition (such as assignment of social security numbers and assignment of rights to third-party benefits as a condition of eligibility) that, if corrected, would not result in a difference in the amount of medical assistance paid.

(o) TECHNICAL AMENDMENTS RELATING TO NEW JERSEY RESPITE CARE PILOT PROJECT.—

(1) Section 9414(b) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(A) by redesignating paragraphs (2), (3), and (4), as paragraphs (3), (4), and (5), respectively,

(B) by inserting after paragraph (1) the following new paragraph:

"(2) provide that the State may submit a detailed proposal describing the project (in lieu of a formal request for the waiver of applicable provisions of title XIX of the Social Security Act) and that submission of such a description by the State will be treated as such a request for purposes of subsection (g),", and

(C) in paragraph (3), as redesignated by paragraph (1) of this subsection, by striking "if the project" and all that follows through "Act" the second place it appears and inserting "the State shall utilize a post-eligibility cost-sharing formula based on the available income of participants with income in excess of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981)".

(2)(A) Section 9414(a) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "elderly and disabled individuals" and inserting "eligible individuals".

(B) Section 9414(c) of the Omnibus Budget Reconciliation Act of 1986 is amended to read as follows:

"(c) Definitions.—For purposes of this section—

"(1) the term 'eligible individual' means an individual—

"(A) who is elderly or disabled,

"(B)(i) whose income (not including the income of the spouse or family of the individual) does not exceed 300 percent of the amount in effect under section 1611(a)(1)(A) of the Social Security Act (as increased pursuant to section 1617 of such Act), or

"(ii) in the case of an individual and spouse who are both dependent on a caregiver, whose combined incomes do not exceed such amount,

"(C) whose liquid resources (as declared by the individual) do not exceed $40,000,

"(D) who is at risk of institutionalization unless the individual's caregiver is provided with respite care, and

"(E) who has been determined to meet the requirements of subparagraphs (A) through (D) in accordance with an application process designed by the State; and

"(2) the term 'respite care services' shall include—

"(A) short-term and intermittent—

"(i) companion or sitter services (paid as well as volunteer),

"(ii) homemaker and personal care services,

"(iii) adult day care, and

"(iv) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual), and

"(B) peer support and training for family caregivers (using informal support groups and organized counseling).".

(3) Section 9414(g) of the Omnibus Budget Reconciliation Act of 1986 is amended by inserting "section 1902(a)(10)(C)(i)(III)," after "section 1902(a)(10)(B),".

(4) The amendments made by this subsection shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(p) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) Subclause (IX) of section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended by moving it 4 ems to the right so as to align its left margin with that of subclause (VIII) of that section.

(2) Subclause (X) of section 1902(a)(10)(A)(ii) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended by moving it 2 ems to the right so as to align its left margin with that of subclause (VIII) of that section.

(3) Section 1902(a)(17) of such Act (42 U.S.C. 1396a(a)(17)) is amended by striking "subsection (l)(3)" and inserting "subsections (l)(3), (m)(4), and (m)(5)".

(4) Section 1902(a)(30)(C) of such Act (42 U.S.C. 1396(a)(30)(C)) is amended by striking "provide" and inserting "use".

(5) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting ", 1902(a)(10)(A)(ii)(X), or 1905(p)(1)" after "1902(a)(10)(A)(ii)(IX)".

(6) Paragraph (9) of section 1902(e) of such Act (42 U.S.C. 1396a(e)) is amended by moving the paragraph 2 ems to the left so as to align the left margin of subparagraph (A) (before clause (i)) and subparagraphs (B) and (C) with the left margin of paragraph (8).

(7) Section 1902(l)(1) of such Act (42 U.S.C. 1396a(l)(1)) is amended—

(A) by striking "(1)(l) Individuals" and inserting "(l)(1) Individuals",

(B) by moving the matter before subparagraph (A) 2 ems to the left so it is indented only once, and

(C) by striking ", whose" and inserting "and whose".

(8) Sections 1902(l)(2), 1902(m)(2)(A), 1905(p)(2)(A), and 501(b)(2) of such Act (42 U.S.C. 1396a(l)(2), 1396a(m)(2)(A), 1396d(p)(2)(A), 701(b)(2)) are each amended by striking "non-farm".

(9) Paragraphs (1) and (2) of section 1925(a), as redesignated by section [4111(a)] of this title, are amended to read as follows:

"(1) AFDC.—(A) Section 402(a)(32) of this Act (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

"(B) Section 402(a)(37) of this Act (relating to individuals who lose AFDC eligibility due to increased earnings).

"(C) Section 406(h) of this Act (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

"(D) Section 414(g) of this Act (relating to certain individuals participating in work supplementation programs).

"(2) SSI.—(A) Section 1611(e) of this Act (relating to treatment of couples sharing an accommodation in a facility).

"(B) Section 1619 of this Act (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

"(C) Section 1634(b) of this Act (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

"(D) Section 1634(c) of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 202(d) of this Act).".

(10) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 9411(a)(2)(B) of such Act is amended by inserting "such" after "need for".

Subtitle C—Nursing Home Reform

PART 1—MEDICARE PROGRAM

SEC. 4201. REQUIREMENTS FOR SKILLED NURSING FACILITIES.

(a) SPECIFICATION OF FACILITY REQUIREMENTS.—Title XVIII of the Social Security Act is amended—

(1) by amending subsection (j) of section 1861 (42 U.S.C. 1395x) to read as follows:

"Skilled Nursing Facility

"(j) The term 'skilled nursing facility' has the meaning given such term in section 1819(a).";

(2) by adding at the end of section 1864 (42 U.S.C. 1395aa) the following new subsection:

"(d) The Secretary may not enter an agreement under this section with a State with respect to determining whether an institution

therein is a skilled nursing facility unless the State meets the requirements specified in section 1819(e).''; and

(3) by adding at the end of part A the following new section:

''REQUIREMENTS FOR, AND ASSURING QUALITY OF CARE IN, SKILLED NURSING FACILITIES

''SEC. 1819. (a) SKILLED NURSING FACILITY DEFINED.—In this title, the term 'skilled nursing facility' means an institution (or a distinct part of an institution) which—

''(1) is primarily engaged in providing to residents—

''(A) skilled nursing care and related services for residents who require medical or nursing care, or

''(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons,

and is not primarily for the care and treatment of mental diseases;

''(2) has in effect a transfer agreement (meeting the requirements of section 1861(l)) with one or more hospitals having agreements in effect under section 1866; and

''(3) meets the requirements for a skilled nursing facility described in subsections (b), (c), and (d) of this section.

''(b) REQUIREMENTS RELATING TO PROVISION OF SERVICES.—

''(1) QUALITY OF LIFE.—

''(A) IN GENERAL.—A skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

''(B) QUALITY ASSESSMENT AND ASSURANCE.—A skilled nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies.

''(2) SCOPE OF SERVICES AND ACTIVITIES UNDER PLAN OF CARE.—A skilled nursing facility must provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care which—

''(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

''(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

''(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

''(3) RESIDENTS' ASSESSMENT.—

''(A) REQUIREMENT.—A skilled nursing facility must conduct a comprehensive, accurate, standardized, reproducible

assessment of each resident's functional capacity, which assessment—

"(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

"(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A);

"(iii) in the case of a resident eligible for benefits under title XIX, uses an instrument which is specified by the State under subsection (e)(5); and

"(iv) in the case of a resident eligible for benefits under part A of this title, includes the identification of medical problems.

"(B) CERTIFICATION.—

"(i) IN GENERAL.—Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

"(ii) PENALTY FOR FALSIFICATION.—

"(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

"(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

"(III) The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A.

"(iii) USE OF INDEPENDENT ASSESSORS.—If a State determines, under a survey under subsection (g) or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

"(C) FREQUENCY.—

"(i) IN GENERAL.—Such an assessment must be conducted—

"(I) promptly upon (but no later than 4 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1990, for each resident of the facility on that date;

"(II) promptly after a significant change in the resident's physical or mental condition; and

"(III) in no case less often than once every 12 months.

"(ii) RESIDENT REVIEW.—The skilled nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

"(D) USE.—The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

"(E) COORDINATION.—Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

"(4) PROVISION OF SERVICES AND ACTIVITIES.—

"(A) IN GENERAL.—To the extent needed to fulfill all plans of care described in paragraph (2), a skilled nursing facility must provide, directly or under arrangements (or, with respect to dental services, under agreements) with others for the provision of—

"(i) nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

"(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

"(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

"(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

"(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident; and

"(vi) routine and emergency dental services to meet the needs of each resident.

The services provided or arranged by the facility must meet professional standards of quality. Nothing in clause (vi) shall be construed as requiring a facility to provide or arrange for dental services described in that clause without additional charge.

"(B) QUALIFIED PERSONS PROVIDING SERVICES.—Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

"(C) REQUIRED NURSING CARE.—

"(i) IN GENERAL.—Except as provided in clause (ii), a skilled nursing facility must provide 24-hour nursing service which is sufficient to meet nursing needs of its residents and must employ the services of a registered

professional nurse at least during the day tour of duty (of at least 8 hours a day) 7 days a week.

"(ii) EXCEPTION.—To the extent that clause (i) may be deemed to require that a skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if the Secretary finds that—

"(I) the facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

"(II) the facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week, and

"(III) the facility either has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty.

A waiver under this subparagraph shall be subject to annual renewal.

"(5) REQUIRED TRAINING OF NURSE AIDES.—

"(A) IN GENERAL.—A skilled nursing facility must not use (on a full-time, temporary, per diem, or other basis) any individual, who is not a licensed health professional (as defined in subparagraph (E)), as a nurse aide in the facility on or after October 1, 1989, (or January 1, 1990, in the case of an individual used by the facility as a nurse aide before July 1, 1989) for more than 4 months unless the individual—

"(i) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A), and

"(ii) is competent to provide such services.

"(B) OFFERING COMPETENCY EVALUATION PROGRAMS FOR CURRENT EMPLOYEES.—A skilled nursing facility must provide, for individuals used as a nurse aide by the facility as of July 1, 1989, for a competency evaluation program approved by the State under subsection (e)(1) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

"(C) COMPETENCY.—The skilled nursing facility must not permit an individual, other than in a training and competency evaluation program or a competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an indi-

vidual as a nurse aide unless the facility has inquired of the State registry established under subsection (e)(2)(A) as to information in the registry concerning the individual.

"(D) RE-TRAINING REQUIRED.—For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program.

"(E) REGULAR IN-SERVICE EDUCATION.—The skilled nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

"(F) NURSE AIDE DEFINED.—In this paragraph, the term 'nurse aide' means any individual providing nursing or nursing-related services to residents in a skilled nursing facility, but does not include an individual—

"(i) who is a licensed health professional (as defined in subparagraph (G)), or

"(ii) who volunteers to provide such services without monetary compensation.

"(G) LICENSED HEALTH PROFESSIONAL DEFINED.—In this paragraph, the term 'licensed health professional' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

"(6) PHYSICIAN SUPERVISION AND CLINICAL RECORDS.—A skilled nursing facility must—

"(A) require that the medical care of every resident be provided under the supervision of a physician;

"(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

"(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)).

"(7) REQUIRED SOCIAL SERVICES.—In the case of a skilled nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

"(c) REQUIREMENTS RELATING TO RESIDENTS' RIGHTS.—

"(1) GENERAL RIGHTS.—

"(A) SPECIFIED RIGHTS.—A skilled nursing facility must protect and promote the rights of each resident, including each of the following rights:

"(i) FREE CHOICE.—The right to choose a personal attending physician, to be fully informed in advance

about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

"(ii) FREE FROM RESTRAINTS.—The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

"(I) to ensure the physical safety of the resident or other residents, and

"(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary) until such an order could reasonably be obtained.

"(iii) PRIVACY.—The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

"(iv) CONFIDENTIALITY.—The right to confidentiality of personal and clinical records.

"(v) ACCOMMODATION OF NEEDS.—The right—

"(I) to reside and receive services with reasonable accommodations of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

"(II) to receive notice before the room or roommate of the resident in the facility is changed.

"(vi) GRIEVANCES.—The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

"(vii) PARTICIPATION IN RESIDENT AND FAMILY GROUPS.—The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

"(ix) PARTICIPATION IN OTHER ACTIVITIES.—The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

"(x) EXAMINATION OF SURVEY RESULTS.—The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

"(xi) OTHER RIGHTS.—Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room.

"(B) NOTICE OF RIGHTS AND SERVICES.—A skilled nursing facility must—

"(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;

"(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights); and

"(iii) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this title or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

"(C) RIGHTS OF INCOMPETENT RESIDENTS.—In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this title shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

"(2) TRANSFER AND DISCHARGE RIGHTS.—

"(A) IN GENERAL.—A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

"(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

"(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

"(iii) the safety of individuals in the facility is endangered;

"(iv) the health of individuals in the facility would otherwise be endangered;

"(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title or title XIX on the resident's behalf) an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this title and title XIX; or

"(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in

the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.

"(B) PRE-TRANSFER AND PRE-DISCHARGE NOTICE.—

"(i) IN GENERAL.—Before effecting a transfer or discharge of a resident, a skilled nursing facility must—

"(I) notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

"(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

"(III) include in the notice the items described in clause (iii).

"(ii) TIMING OF NOTICE.—The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

"(I) in a case described in clause (iii) or (iv) of subparagraph (A);

"(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

"(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

"(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

"(iii) ITEMS INCLUDED IN NOTICE.—Each notice under clause (i) must include—

"(I) for transfers or discharges effected on or after October 1, 1990, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3); and

"(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965).

"(C) ORIENTATION.—A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

"(3) ACCESS AND VISITATION RIGHTS.—A skilled nursing facility must—

"(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman described in paragraph (2)(B)(iii)(II), or by the resident's individual physician;

"(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

"(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

"(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

"(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

"(4) EQUAL ACCESS TO QUALITY CARE.—A skilled nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and covered services under this title for all individuals regardless of source of payment.

"(5) ADMISSIONS POLICY.—

"(A) ADMISSIONS.—With respect to admissions practices, a skilled nursing facility must—

"(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this title or under a State plan under title XIX, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this title or such a State plan, and (III) prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits; and

"(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility.

"(B) CONSTRUCTION.—

"(i) NO PREEMPTION OF STRICTER STANDARDS.—Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under this title with respect to admissions practices of skilled nursing facilities.

"(ii) CONTRACTS WITH LEGAL REPRESENTATIVES.—Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

"(6) PROTECTION OF RESIDENT FUNDS.—

"(A) IN GENERAL.—The skilled nursing facility—

"(i) may not require residents to deposit their personal funds with the facility, and

"(ii) once the facility accepts the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

"(B) MANAGEMENT OF PERSONAL FUNDS.—Upon a facility's acceptance of written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

"(i) DEPOSIT.—The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

"(ii) ACCOUNTING AND RECORDS.—The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

"(iii) CONVEYANCE UPON DEATH.—Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

"(C) ASSURANCE OF FINANCIAL SECURITY.—The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

"(D) LIMITATION ON CHARGES TO PERSONAL FUNDS.—The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this title or title XIX.

"(d) REQUIREMENTS RELATING TO ADMINISTRATION AND OTHER MATTERS.—

"(1) ADMINISTRATION.—

"(A) IN GENERAL.—A skilled nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5)).

"(B) REQUIRED NOTICES.—If a change occurs in—

"(i) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the facility,

"(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the facility,

"(iii) the corporation, association, or other company responsible for the management of the facility, or

"(iv) the individual who is the administrator or director of nursing of the facility,

the skilled nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

"(C) SKILLED NURSING FACILITY ADMINISTRATOR.—The administrator of a skilled nursing facility must meet standards established by the Secretary under subsection (f)(4).

"(2) LICENSING AND LIFE SAFETY CODE.—

"(A) LICENSING.—A skilled nursing facility must be licensed under applicable State and local law.

"(B) LIFE SAFETY CODE.—A skilled nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

"(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

"(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in skilled nursing facilities.

"(3) SANITARY AND INFECTION CONTROL AND PHYSICAL ENVIRONMENT.—A skilled nursing facility must—

"(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

"(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

"(4) MISCELLANEOUS.—

"(A) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS.—A skilled nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

"(B) OTHER.—A skilled nursing facility must meet such other requirements relating to the health, safety, and well-

being of residents or relating to the physical facilities thereof as the Secretary may find necessary.

"(e) STATE REQUIREMENTS RELATING TO SKILLED NURSING FACILITY REQUIREMENTS.—The requirements, referred to in section 1864(d), with respect to a State are as follows:

"(1) SPECIFICATION AND REVIEW OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND OF NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—The State must—

"(A) by not later than March 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) and that meet the requirements established under clause (i) or (ii) of subsection (f)(2)(A), and

"(B) by not later than March 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii).

The failure of the Secretary to establish requirements under subsection (f)(2) shall not relieve any State of its responsibility under this paragraph.

"(2) NURSE AIDE REGISTRY.—

"(A) IN GENERAL.—By not later than March 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State.

"(B) INFORMATION IN REGISTRY.—The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

"(3) STATE APPEALS PROCESS FOR TRANSFERS.—The State, for transfers from skilled nursing facilities effected on or after October 1, 1990, must provide for a fair mechanism for hearing appeals on transfers of residents of such facilities. Such mechanism must meet the guidelines established by the Secretary under subsection (f)(3); but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism.

"(4) SKILLED NURSING FACILITY ADMINISTRATOR STANDARDS.—By not later than January 1, 1990, the State must have implemented and enforced the skilled nursing facility administrator standards developed under subsection (f)(4) respecting the qualification of administrators of skilled nursing facilities.

"(5) SPECIFICATION OF RESIDENT ASSESSMENT INSTRUMENT.—Effective July 1, 1989, the State shall specify the instrument to

be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii). Such instrument shall be—

"(A) one of the instruments designated under subsection (f)(6)(B), or

"(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A).

"(f) RESPONSIBILITIES OF SECRETARY RELATING TO SKILLED NURSING FACILITY REQUIREMENTS.—

"(1) GENERAL RESPONSIBILITY.—It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this title, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

"(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

"(A) IN GENERAL.—For purposes of subsections (b)(5) and (e)(1)(A), the Secretary shall establish, by not later than September 1, 1988—

"(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and residents' rights), content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

"(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, residents' rights, and procedures for determination of competency; and

"(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs.

"(B) APPROVAL OF CERTAIN PROGRAMS.—Such requirements—

"(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on the date of the enactment of this section;

"(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be

deemed to have completed such a program approved under subsection (b)(5) if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

"(iii) shall prohibit approval of such a program—

"(I) offered by or in a skilled nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d), within the previous 2 years, or

"(II) offered by or in a skilled nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities.

A State may not delegate its responsibility under clause (iii)(II) to the skilled nursing facility.

"(3) FEDERAL GUIDELINES FOR STATE APPEALS PROCESS FOR TRANSFERS.—For purposes of subsections (c)(2)(B)(iii)(I) and (e)(3), by not later than October 1, 1989, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) must meet to provide a fair mechanism for hearing appeals on transfers of residents from skilled nursing facilities.

"(4) SECRETARIAL STANDARDS FOR QUALIFICATION OF ADMINISTRATORS.—For purposes of subsections (d)(1)(C) and (e)(4), the Secretary shall develop, by not later than March 1, 1989, standards to be applied in assuring the qualifications of administrators of skilled nursing facilities.

"(5) CRITERIA FOR ADMINISTRATION.—The Secretary shall establish criteria for assessing a skilled nursing facility's compliance with the requirement of subsection (d)(1) with respect to—

"(A) its governing body and management,

"(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other skilled nursing facilities,

"(C) disaster preparedness,

"(D) direction of medical care by a physician,

"(E) laboratory and radiological services,

"(F) clinical records, and

"(G) resident and advocate participation.

"(6) SPECIFICATION OF RESIDENT ASSESSMENT DATA SET AND INSTRUMENTS.—The Secretary shall—

"(A) not later than July 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3), and establish guidelines for utilization of the data set; and

"(B) by not later than October 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii).

"(7) LIST OF ITEMS AND SERVICES FURNISHED IN SKILLED NURSING FACILITIES NOT CHARGEABLE TO THE PERSONAL FUNDS OF A RESIDENT.—

"(A) REGULATIONS REQUIRED.—Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after the date of enactment of this section, that define those costs which may be charged to the personal funds of patients in skilled nursing facilities who are individuals receiving benefits under this part and those costs which are to be included in the reasonable cost (or other payment amount) under this title for extended care services.

"(B) RULE IF FAILURE TO PUBLISH REGULATIONS.—If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in such subparagraph, in the case of a resident of a skilled nursing facility who is eligible to receive benefits under this part, the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this title) shall not include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.".

(b) COSTS OF MEETING REQUIREMENTS.—

(1) UNDER REASONABLE COST.—Section 1861(v)(1)(E) of such Act (42 U.S.C. 1395s(v)(1)(E)) is amended by adding at the end the following new sentence: "Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1819 (including the costs of conducting nurse aide training and competency evaluation programs and competency evaluation programs).".

(2) ADJUSTMENT IN PROSPECTIVE PAYMENTS.—Section 1888(d) of such Act (42 U.S.C. 1395yy(d)) is amended by adding at the end the following new paragraph:

"(7) In computing the rates of payment to be made under this subsection, there shall be taken into account the costs described in the last sentence of section 1861(v)(1)(E) (relating to compliance with nursing facility requirements and of conducting nurse aide training and competency evaluation programs and competency evaluation programs).".

(c) EVALUATION.—The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process for residents of skilled nursing facilities under the amendments made by this section.

(d) CONFORMING AMENDMENT.—Section 1861(a)(2) of the Social Security Act (42 U.S.C. 1395x(a)(2)) is amended by striking "skilled nursing facility" and inserting "facility described in section 1919(a)(2) or subsection (y)(1)".

SEC. 4202. SURVEY AND CERTIFICATION PROCESS.

(a) STATE REQUIREMENT FOR PROCESS.—Title XVIII of the Social Security Act is amended—

(1) in section 1864(d) (42 U.S.C. 1395aa(d)), as added by section 4201(a)(2) of this Act, by inserting before the period "and section 1819(g)", and

(2) in section 1819, as added by section 4201(a)(3) of this Act, by adding at the end the following new subsection:

"(g) SURVEY AND CERTIFICATION PROCESS.—

"(1) STATE AND FEDERAL RESPONSIBILITY.—

"(A) IN GENERAL.—Pursuant to an agreement under section 1864, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d). The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State skilled nursing facilities with the requirements of such subsections.

"(B) EDUCATIONAL PROGRAM.—Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of skilled nursing facilities in order to present current regulations, procedures, and policies under this section.

"(C) INVESTIGATION OF ALLEGATIONS OF RESIDENT NEGLECT AND ABUSE AND MISAPPROPRIATION OF RESIDENT PROPERTY.—The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt, review, and investigation of allegations of resident neglect and abuse and misappropriation of resident property by a nurse aide in a nursing facility. If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding.

"(D) CONSTRUCTION.—The failure of the Secretary to establish standards under subsection (f) shall not relieve a State of its responsibility under this subsection.

"(2) SURVEYS.—

"(A) STANDARD SURVEY.—

"(i) IN GENERAL.—Each skilled nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a skilled nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A. The Secretary shall review each State's procedures for the

scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(ii) CONTENTS.—Each standard survey shall include, for a case-mix stratified sample of residents—

"(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

"(II) written plans of care provided under subsection (b)(2) and an audit of the residents' assessments under subsection (b)(3) to determine the accuracy of such assessments and the adequacy of such plans of care, and

"(III) a review of compliance with residents' rights under subsection (c).

"(iii) FREQUENCY.—

"(I) IN GENERAL.—Each skilled nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The Statewide average interval between standard surveys of skilled nursing facilities under this subsection shall not exceed 12 months.

"(II) SPECIAL SURVEYS.—If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a skilled nursing facility, or the director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

"(B) EXTENDED SURVEYS.—

"(i) IN GENERAL.—Each skilled nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

"(ii) TIMING.—The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

"(iii) CONTENTS.—In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d). Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-serv-

ice training, and, if appropriate, of contracts with consultants.

"(iv) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) on the basis of findings in a standard survey.

"(C) SURVEY PROTOCOL.—Standard and extended surveys shall be conducted—

"(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than October 1, 1990, and

"(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

"(D) CONSISTENCY OF SURVEYS.—Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

"(E) SURVEY TEAMS.—

"(i) IN GENERAL.—Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

"(ii) PROHIBITION OF CONFLICTS OF INTEREST.—A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d), or who has a personal or familial financial interest in the facility being surveyed.

"(iii) TRAINING.—The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

"(3) VALIDATION SURVEYS.——

"(A) IN GENERAL.—The Secretary shall conduct onsite surveys of a representative sample of skilled nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph

(2). If the State has determined that an individual skilled nursing facility meets the requirements of subsections (b), (c), and (d), but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

"(B) SCOPE.—With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but in no case less than 5 skilled nursing facilities in the State.

"(C) REMEDIES FOR SUBSTANDARD PERFORMANCE.—If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary shall provide for an appropriate remedy, which may include the training of survey teams in the State.

"(C) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a skilled nursing facility with any of the requirements of subsections (b), (c), and (d), the Secretary may conduct a survey of the facility and, on that basis, make independent and binding determinations concerning the extent to which the skilled nursing facility meets such requirements.

"(4) INVESTIGATION OF COMPLAINTS AND MONITORING COMPLIANCE.—Each State shall maintain procedures and adequate staff to—

"(A) investigate complaints of violations of requirements by skilled nursing facilities, and

"(B) monitor, on-site, on a regular, as needed basis, a skilled nursing facility's compliance with the requirements of subsections (b), (c), and (d), if—

"(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

"(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

"(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against chronically substandard skilled nursing facilities.

"(5) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys and certifications made respecting skilled nursing facilities, including statements of deficiencies and plans of correction,

"(ii) copies of cost reports of such facilities filed under this title or title XIX,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information disclosed under section 1126.

"(B) NOTICE TO OMBUDSMAN.— Each State shall notify the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d), with respect to a skilled nursing facility in the State.

"(C) NOTICE TO PHYSICIANS AND SKILLED NURSING FACILITY ADMINISTRATOR LICENSING BOARD.—If a State finds that a skilled nursing facility has provided substandard quality of care, the State shall notify—

"(i) the attending physician of each resident with respect to which such finding is made, and

"(ii) the State board responsible for the licensing of the skilled nursing facility administrator at the facility.

"(C) ACCESS TO FRAUD CONTROL UNITS.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys and certifications under this subsection.".

(c) POSTING SURVEY RESULTS.—Section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by inserting, after "readily available form and place" in the fifth sentence, the following: ", and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives),".

SEC. 4203. ENFORCEMENT PROCESS.

(a) STATE REQUIREMENT.—Title XVIII of the Social Security Act is amended—

(1) in section 1864(d) (42 U.S.C. 1395aa(d)), as added by section 4201(a)(2) and as amended by section 4202(a)(1) of this Act, by inserting before the period at the end the following: "and the establishment of remedies under sections 1819(h)(2)(B) and 1819(h)(2)(C) (relating to establishment and application of remedies)"; and

(2) by adding at the end of section 1819 of such Act, as added by section 4201(a)(3) and as amended by section 4202(a)(2), the end the following new subsection:

"(h) ENFORCEMENT PROCESS.—

"(1) IN GENERAL.—If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) or otherwise, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), or (d), and further finds that the facility's deficiencies—

"(A) immediately jeopardize the health or safety of its residents, the State shall recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(i); or

"(B) do not immediately jeopardize the health or safety of its residents, the State may recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(ii).

If a State finds that a skilled nursing facility meets the requirements of subsections (b), (c), and (d), but, as of a previous period, did not meet such requirements, the State may recommend a civil money penalty under paragraph (2)(B)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

"(2) SECRETARIAL AUTHORITY.—

"(A) IN GENERAL.—With respect to any skilled nursing facility in a State, if the Secretary finds, or pursuant to a recommendation of the State under paragraph (1) finds, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), or (d), and further finds that the facility's deficiencies—

"(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (B)(iii), or terminate the facility's participation under this title and may provide, in addition, for one or more of the other remedies described in subparagraph (B); or

"(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (B).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a skilled nursing facility's deficiencies. If the Secretary finds, or pursuant to the recommendation of the State under paragraph (1) finds, that a skilled nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (B)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

"(B) SPECIFIED REMEDIES.—The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

"(i) DENIAL OF PAYMENT.—The Secretary may deny any further payments under this title with respect to all individuals entitled to benefits under this title in the facility or with respect to such individuals admitted to the facility after the effective date of the finding.

"(ii) AUTHORITY WITH RESPECT TO CIVIL MONEY PENALTIES.—The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1128A.

"(iii) APPOINTMENT OF TEMPORARY MANAGEMENT.—In consultation with the State, the Secretary may ap-

point temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d).

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d).

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

"(C) CONTINUATION OF PAYMENTS PENDING REMEDIATION.—The Secretary may continue payments, over a period of not longer than 6 months, under this title with respect to a skilled nursing facility not in compliance with a requirement of subsection (b), (c), or (d), if—

"(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

"(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(iii) the facility agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

"(D) ASSURING PROMPT COMPLIANCE.—If a skilled nursing facility has not complied with any of the requirements of subsections (b), (c), and (d), within 3 months after the date the facility is found to be out of compliance with such requirements, the Secretary shall impose the remedy described in subparagraph (B)(i) for all individuals who are admitted to the facility after such date.

"(E) REPEATED NONCOMPLIANCE.—In the case of a skilled nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2), has been found to have provided substandard quality of care, the Secretary shall (regardless of what other remedies are provided)—

"(i) impose the remedy described in subparagraph (B)(i), and

"(ii) monitor the facility under subsection (g)(4)(B), until the facility has demonstrated, to the satisfaction of the Secretary, that it is in compliance with the requirements of subsections (b), (c), and (d), and that it will remain in compliance with such requirements.

"(3) EFFECTIVE PERIOD OF DENIAL OF PAYMENT.—A finding to deny payment under this subsection shall terminate when the Secretary finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d).

"(4) IMMEDIATE TERMINATION OF PARTICIPATION FOR FACILITY WHERE SECRETARY FINDS NONCOMPLIANCE AND IMMEDIATE JEOPARDY.—If the Secretary finds that a skilled nursing facility has not met a requirement of subsection (b), (c), or (d), and finds that the failure immediately jeopardizes the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(B)(iii), or the Secretary shall terminate the facility's participation under this title. If the facility's participation under this title is terminated, the State shall provide for the safe and orderly transfer of the residents eligible under this title consistent with the requirements of subsection (c)(2).

"(5) CONSTRUCTION.—The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing.

"(6) SHARING OF INFORMATION.—Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under this title and title XIX, including investigations by State medicaid fraud control units."

SEC. 4204. EFFECTIVE DATES.

(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1819 of the Social Security Act, the amendments made by this part shall apply to extended care services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date.

(b) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.

SEC. 4205. ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which skilled nursing facilities are complying with the requirements of subsections (b), (c), and (d)

of section 1819 of the Social Security Act (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1819(h) of such Act (as added by section 4203 of this Act).

SEC. 4206. CONSTRUCTION.

Section 1819 of the Social Security Act is amended by adding at the end the following new subsection:

"(i) CONSTRUCTION.—Where requirements or obligations under this section are identical to those provided under section 1919 of this Act, the fulfillment of those requirements or obligations under section 1919 shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.".

PART 2—MEDICAID PROGRAM

SEC. 4211. REQUIREMENTS FOR NURSING FACILITIES.

(a) SPECIFICATION OF FACILITY REQUIREMENTS.—Title XIX of the Social Security Act is amended—

(1) by redesignating section 1922 as section 1923,

(2) by redesignating section 1919 as section 1922 and by transferring and inserting such section after section 1921, and

(3) by inserting after section 1918 the following new section:

"REQUIREMENTS FOR NURSING FACILITIES

"SEC. 1919. (a) NURSING FACILITY DEFINED.—In this title, the term 'nursing facility' means an institution (or a distinct part of an institution) which—

"(1) is primarily engaged in providing to residents—

"(A) skilled nursing care and related services for residents who require medical or nursing care,

"(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

"(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities,

and is not primarily for the care and treatment of mental diseases;

"(2) has in effect a transfer agreement (meeting the requirements of section 1861(l)) with one or more hospitals having agreements in effect under section 1866; and

"(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d).

"(b) REQUIREMENTS RELATING TO PROVISION OF SERVICES.—

"(1) QUALITY OF LIFE.—

"(A) IN GENERAL.—A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

"(B) QUALITY ASSESSMENT AND ASSURANCE.—A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies.

"(2) SCOPE OF SERVICES AND ACTIVITIES UNDER PLAN OF CARE.—A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which—

"(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

"(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

"(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

"(3) RESIDENTS' ASSESSMENT.—

"(A) REQUIREMENT.—A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

"(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

"(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A);

"(iii) in the case of a resident eligible for benefits under this title, uses an instrument which is specified by the State under subsection (e)(5); and

"(iv) in the case of a resident eligible for benefits under part A of title XVIII, includes the identification of medical problems.

"(B) CERTIFICATION.—

"(i) IN GENERAL.—Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

"(ii) PENALTY FOR FALSIFICATION.—

"(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

"(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

"(III) The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A.

"(iii) USE OF INDEPENDENT ASSESSORS.—If a State determines, under a survey under subsection (g) or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

"(C) FREQUENCY.—

"(i) IN GENERAL.—Such an assessment must be conducted—

"(I) promptly upon (but no later than 4 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;

"(II) promptly after a significant change in the resident's physical or mental condition; and

"(III) in no case less often than once every 12 months.

"(ii) RESIDENT REVIEW.—The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

"(D) USE.—The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

"(E) COORDINATION.—Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

"(F) REQUIREMENTS RELATING TO PREADMISSION SCREENING FOR MENTALLY ILL AND MENTALLY RETARDED INDIVIDUALS.—A nursing facility must not admit, on or after January 1, 1989, any new resident who—

"(i) is mentally ill (as defined in subsection (e)(7)(G)(i)) unless the State mental health authority has determined (based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether

the individual requires active treatment for mental illness, or

"(ii) is mentally retarded (as defined in subsection (e)(7)(G)(ii)) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires active treatment for mental retardation.

"(4) PROVISION OF SERVICES AND ACTIVITIES.—

"(A) IN GENERAL.—To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)—

"(i) nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

"(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

"(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

"(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

"(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident; and

"(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident.

The services provided or arranged by the facility must meet professional standards of quality.

"(B) QUALIFIED PERSONS PROVIDING SERVICES.—Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

"(C) REQUIRED NURSING CARE; FACILITY WAIVERS.—

"(i) GENERAL REQUIREMENTS.—With respect to nursing facility services provided on or after October 1, 1990, a nursing facility—

"(I) except as provided in clause (ii), must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and

"(II) except as provided in clause (ii), must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.

"(ii) FACILITY WAIVERS.—

"(i) WAIVER BY STATE.—A State may waive the requirement of subclause (I) or (II) of clause (i) with respect to a facility if—

"(I) the facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel,

"(II) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility, and

"(III) the State finds that, for any such periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (ii) shall be accepted by the Secretary for purposes of this title to the same extent as is the State's certification of the facility. In granting or renewing a waiver, a State may require the facility to employ other qualified, licensed personnel.

"(ii) ASSUMPTION OF WAIVER AUTHORITY BY SECRETARY.—If the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and excercise the authority of the State to grant waivers.

"(5) REQUIRED TRAINING OF NURSE AIDES.—

"(A) IN GENERAL.—A nursing facility must not use (on a full-time, temporary, per diem, or other basis) any individual, who is not a licensed health professional (as defined in subparagraph (E)), as a nurse aide in the facility on or after January 1, 1990, for more than 4 months unless the individual—

"(i) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A), and

"(ii) is competent to provide such services.

"(B) OFFERING COMPETENCY EVALUATION PROGRAMS FOR CURRENT EMPLOYEES.—A nursing facility must provide, for individuals used as a nurse aide by the facility as of July 1, 1989, for a competency evaluation program approved by the State under subsection (e)(1) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

"(C) COMPETENCY.—The nursing facility must not permit an individual, other than in a training and competency evaluation program or a competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as

a nurse aide unless the facility has inquired of the State registry established under subsection (e)(2)(A) as to information in the registry concerning the individual.

"(D) RE-TRAINING REQUIRED.—For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program.

"(E) REGULAR IN-SERVICE EDUCATION.—The nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

"(F) NURSE AIDE DEFINED.—In this paragraph, the term 'nurse aide' means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual—

"(i) who is a licensed health professional (as defined in subparagraph (G)), or

"(ii) who volunteers to provide such services without monetary compensation.

"(G) LICENSED HEALTH PROFESSIONAL DEFINED.—In this paragraph, the term 'licensed health professional' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

"(6) PHYSICIAN SUPERVISION AND CLINICAL RECORDS.—A nursing facility must—

"(A) require that the health care of every resident be provided under the supervision of a physician;

"(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

"(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)), as well as the results of any pre-admission screening conducted under subsection (e)(7).

"(7) REQUIRED SOCIAL SERVICES.—In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

"(c) REQUIREMENTS RELATING TO RESIDENTS' RIGHTS.—

"(1) GENERAL RIGHTS.—

"(A) SPECIFIED RIGHTS.—A nursing facility must protect and promote the rights of each resident, including each of the following rights:

"(i) FREE CHOICE.—The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

"(ii) FREE FROM RESTRAINTS.—The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

"(I) to ensure the physical safety of the resident or other residents, and

"(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary) until such an order could reasonably be obtained.

"(iii) PRIVACY.—The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

"(iv) CONFIDENTIALITY.—The right to confidentiality of personal and clinical records.

"(v) ACCOMMODATION OF NEEDS.—The right—

"(I) to reside and receive services with reasonable accommodations of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

"(II) to receive notice before the room or roommate of the resident in the facility is changed.

"(vi) GRIEVANCES.—The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

"(vii) PARTICIPATION IN RESIDENT AND FAMILY GROUPS.—The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

"(ix) PARTICIPATION IN OTHER ACTIVITIES.—The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

"(x) EXAMINATION OF SURVEY RESULTS.—The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Sec-

retary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

"(xi) OTHER RIGHTS.—Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room.

"(B) NOTICE OF RIGHTS.—A nursing facility must—

"(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;

"(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights);

"(iii) inform each resident who is entitled to medical assistance under this title—

"(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under section 1902(a)(28)(B)) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted in section 1916), and of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services, and

"(II) of changes in the items and services described in subclause (I) and of changes in the charges imposed for items and services described in that subclause; and

"(iv) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under title XVIII or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

"(C) RIGHTS OF INCOMPETENT RESIDENTS.—In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this title shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

"(D) USE OF PSYCHOPHARMACOLOGIC DRUGS.—Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent,

external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

"(2) TRANSFER AND DISCHARGE RIGHTS.—

"(A) IN GENERAL.—A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

"(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

"(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

"(iii) the safety of individuals in the facility is endangered;

"(iv) the health of individuals in the facility would otherwise be endangered;

"(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title or title XVIII on the resident's behalf) an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this title and title XVIII; or

"(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this title after admission to the facility, only charges which may be imposed under this title shall be considered to be allowable.

"(B) PRE-TRANSFER AND PRE-DISCHARGE NOTICE.—

"(i) IN GENERAL.—Before effecting a transfer or discharge of a resident, a nursing facility must—

"(I) notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

"(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

"(III) include in the notice the items described in clause (iii).

"(ii) TIMING OF NOTICE.—The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

"(I) in a case described in clause (iii) or (iv) of subparagraph (A);

"(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

"(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

"(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

"(iii) ITEMS INCLUDED IN NOTICE.—Each notice under clause (i) must include—

"(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3);

"(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);

"(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

"(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i)), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

"(C) ORIENTATION.—A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

"(D) NOTICE ON BED-HOLD POLICY AND READMISSION.—

"(i) NOTICE BEFORE TRANSFER.—Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and a family member or legal representative concerning—

"(I) the provisions of the State plan under this title regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

"(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

"(ii) NOTICE UPON TRANSFER.—At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and a family member or legal representative of the duration of any period described in clause (i).

"(iii) PERMITTING RESIDENT TO RETURN.—A nursing facility must establish and follow a written policy under which a resident—

"(I) who is eligible for medical assistance for nursing facility services under a State plan,

"(II) who is transferred from the facility for hospitalization or therapeutic leave, and

"(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semi-private room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

"(3) ACCESS AND VISITATION RIGHTS.—A nursing facility must—

"(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

"(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

"(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

"(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

"(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

"(4) EQUAL ACCESS TO QUALITY CARE.—

"(A) IN GENERAL.—A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

"(B) CONSTRUCTION.—

"(i) NOTHING PROHIBITING ANY CHARGES FOR NON-MEDICAID PATIENTS.—Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

"(ii) NO ADDITIONAL SERVICES REQUIRED.—Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

"(5) ADMISSIONS POLICY.—

"(A) ADMISSIONS.—With respect to admissions practices, a nursing facility must—

"(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this title or title XVIII, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this title or title XVIII, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

"(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

"(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this title, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

"(B) CONSTRUCTION.—

"(i) NO PREEMPTION OF STRICTER STANDARDS.—Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

"(ii) CONTRACTS WITH LEGAL REPRESENTATIVES.—Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

"(iii) CHARGES FOR ADDITIONAL SERVICES REQUESTED.—Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term 'nursing facility services'.

"(iv) BONA FIDE CONTRIBUTIONS.—Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such

contribution is not a condition of admission, expediting admission, or continued stay in the facility.

"(6) PROTECTION OF RESIDENT FUNDS.—

"(A) IN GENERAL.—The nursing facility—

"(i) may not require residents to deposit their personal funds with the facility, and

"(ii) once the facility accepts the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

"(B) MANAGEMENT OF PERSONAL FUNDS.—Upon a facility's acceptance of written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

"(i) DEPOSIT.—The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

"(ii) ACCOUNTING AND RECORDS.—The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

"(iii) NOTICE OF CERTAIN BALANCES.—The facility must notify each resident receiving medical assistance under the State plan under title XIX when the amount in the resident's account reaches $200 less than the dollar amount determined under section 1611(a)(3)(B) and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under title XVI.

"(iv) CONVEYANCE UPON DEATH.—Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

"(C) ASSURANCE OF FINANCIAL SECURITY.—The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

"(D) LIMITATION ON CHARGES TO PERSONAL FUNDS.—The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this title or title XVIII.

"(d) REQUIREMENTS RELATING TO ADMINISTRATION AND OTHER MATTERS.—

"(1) ADMINISTRATION.—

"(A) IN GENERAL.—A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5)).

"(B) REQUIRED NOTICES.—If a change occurs in—

"(i) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the facility,

"(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the facility,

"(iii) the corporation, association, or other company responsible for the management of the facility, or

"(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

"(C) NURSING FACILITY ADMINISTRATOR.—The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4).

"(2) LICENSING AND LIFE SAFETY CODE.—

"(A) LICENSING.—A nursing facility must be licensed under applicable State and local law.

"(B) LIFE SAFETY CODE.—A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

"(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

"(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in nursing facilities.

"(3) SANITARY AND INFECTION CONTROL AND PHYSICAL ENVIRONMENT.—A nursing facility must—

"(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

"(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

"(4) MISCELLANEOUS.—

"(A) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS.—A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124 and with accepted professional standards and principles which apply to professionals providing services in such a facility.

"(B) OTHER.—A nursing facility must meet such other requirements relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary.".

(c) STATE REQUIREMENTS RELATING TO NURSING FACILITY REQUIREMENTS.—Section 1919 of such Act is further amended by adding at the end the following new subsection:

"(e) STATE REQUIREMENTS RELATING TO NURSING FACILITY REQUIREMENTS.—As a condition of approval its plan under this title, a State must provide for the following:

"(1) SPECIFICATION AND REVIEW OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND OF NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—The State must—

"(A) by not later than September 1, 1988, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) and that meet the requirements established under clause (i) or (ii) of subsection (f)(2)(A), and

"(B) by not later than September 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii).

The failure of the Secretary to establish requirements under subsection (f)(2) shall not relieve any State of its responsibility under this paragraph.

"(2) NURSE AIDE REGISTRY.—

"(A) IN GENERAL.—By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State.

"(B) INFORMATION IN REGISTRY.—The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of

any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

"(3) STATE APPEALS PROCESS FOR TRANSFERS.—The State, for transfers from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3), for hearing appeals on transfers of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.

"(4) NURSING FACILITY ADMINISTRATOR STANDARDS.—By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) respecting the qualification of administrators of nursing facilities.

"(5) SPECIFICATION OF RESIDENT ASSESSMENT INSTRUMENT.—Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii). Such instrument shall be—

"(A) one of the instruments designated under subsection (f)(6)(B), or

"(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A).

"(6) NOTICE OF MEDICAID RIGHTS.—Each State, as a condition of approval of its plan under this title, effective April 1, 1988, must develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this title.

"(7) STATE REQUIREMENTS FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—

"(A) PREADMISSION SCREENING.—Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8)) described in subsection (b)(3)(F) for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

"(B) STATE REQUIREMENT FOR ANNUAL RESIDENT REVIEW.—

"(i) FOR MENTALLY ILL RESIDENTS.—As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority)—

"(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1905(h)) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

"(II) whether or not the resident requires active treatment for mental illness.

"(ii) FOR MENTALLY RETARDED RESIDENTS.—As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8))—

"(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1905(d); and

"(II) whether or not the resident requires active treatment for mental retardation.

"(iii) FREQUENCY OF REVIEWS.—

"(I) ANNUAL.—Except as provided in subclauses (II) and (III), the reviews and determinations under clauses (i) and (ii) must be conducted with respect to each mentally ill or mentally retarded resident not less often than annually.

"(II) PREADMISSION REVIEW CASES.—In the case of a resident subject to a preadmission review under subsection (b)(3)(F), the review and determination under clause (i) or (ii) need not be done until the resident has resided in the nursing facility for 1 year.

"(III) INITIAL REVIEW.—The reviews and determinations under clauses (i) and (ii) must first be conducted (for each resident not subject to preadmission review under subsection (b)(3)(F)) by not later than April 1, 1990.

"(C) RESPONSE TO PREADMISSION SCREENING AND RESIDENT REVIEW.—As of April 1, 1990, the State must meet the following requirements:

"(i) LONG-TERM RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

"(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

"(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

"(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

"(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation.

A State shall not be denied payment under this title for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

"(ii) OTHER RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

"(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2),

"(II) prepare and orient the resident for such discharge, and

"(III) provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation.

"(iii) RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES AND NOT REQUIRING ACTIVE TREATMENT.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require active treatment for mental illness or mental retardation, the State must—

"(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2), and

"(II) prepare and orient the resident for such discharge.

"(D) DENIAL OF PAYMENT WHERE FAILURE TO CONDUCT PREADMISSION SCREENING.—No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual for whom a determination

is required under subsection (b)(3)(F) or subparagraph (B) but for whom the determination is not made.

"(E) PERMITTING ALTERNATIVE DISPOSITION PLANS.—With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require active treatment for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirement of this paragraph if, before October 1, 1988, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C).

"(F) APPEALS PROCEDURES.—Each State, as a condition of approval of its plan under this title, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

"(G) DEFINITIONS.—In this paragraph and in subsection (b)(3)(F):

"(i) An individual is considered to be 'mentally ill' if the individual has a primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder).

"(ii) An individual is considered to be 'mentally retarded' if the individual is mentally retarded or a person with a related condition (as described in section 1905(d)).

"(iii) The term 'active treatment' has the meaning given such term by the Secretary in regulations, but does not include, in the case of a resident of a nursing facility, services within the scope of services which the facility must provide or arrange for its residents under subsection (b)(4).

"(f) RESPONSIBILITIES OF SECRETARY RELATING TO NURSING FACILITY REQUIREMENTS.—

"(1) GENERAL RESPONSIBILITY.—It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this title, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

"(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

"(A) IN GENERAL.—For purposes of subsections (b)(5) and (e)(1)(A), the Secretary shall establish, by not later than July 1, 1988—

"(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and residents' rights), content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

"(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and residents' rights, and procedures for determination of competency;

"(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs.

"(B) APPROVAL OF CERTAIN PROGRAMS.—Such requirements—

"(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on the date of the enactment of this section;

"(ii) shall permit a State to find that an individual who has completed (before January 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

"(iii) shall prohibit approval of such a program—

"(I) offered by or in a nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d), within the previous 2 years, or

"(II) offered by or in a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities.

A State may not delegate its responsibility under clause (iii)(II) to the nursing facility.

"(3) FEDERAL GUIDELINES FOR STATE APPEALS PROCESS FOR TRANSFERS.—For purposes of subsections (c)(2)(B)(iii) and (e)(3), by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) must meet to provide a fair mecha-

nism for hearing appeals on transfers of residents from nursing facilities.

"(4) SECRETARIAL STANDARDS QUALIFICATION OF ADMINISTRATORS.—For purposes of subsections (d)(1)(C) and (e)(4), the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of nursing facilities.

"(5) CRITERIA FOR ADMINISTRATION.—The Secretary shall establish criteria for assessing a nursing facility's compliance with the requirement of subsection (d)(1) with respect to—

"(A) its governing body and management,

"(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other nursing facilities,

"(C) disaster preparedness,

"(D) direction of medical care by a physician,

"(E) laboratory and radiological services,

"(F) clinical records, and

"(G) resident and advocate participation.

"(6) SPECIFICATION OF RESIDENT ASSESSMENT DATA SET AND INSTRUMENTS.—The Secretary shall—

"(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3), and establish guidelines for utilization of the data set; and

"(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii).

"(7) LIST OF ITEMS AND SERVICES FURNISHED IN NURSING FACILITIES NOT CHARGEABLE TO THE PERSONAL FUNDS OF A RESIDENT.—

"(A) REGULATIONS REQUIRED.—Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after the date of enactment of this section, that define those costs which may be charged to the personal funds of patients in nursing facilities who are individuals receiving medical assistance with respect to nursing facility services under this title and those costs which are to be included in the payment amount under this title for nursing facility services.

"(B) RULE IF FAILURE TO PUBLISH REGULATIONS.—If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in that subparagraph, in the case of a resident of a nursing facility who is eligible to receive benefits for nursing facility services under this title, for purposes of section 1902(a)(28)(B), the Secretary shall be deemed to have promulgated regulations under this paragraph which provide that the costs which

may not be charged to the personal funds of such resident (and for which payment is considered to be made under this title) do not include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

"(8) FEDERAL MINIMUM CRITERIA AND MONITORING FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—

"(A) MINIMUM CRITERIA.—The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (b)(3)(F) and (e)(7)(B) and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.

"(B) MONITORING COMPLIANCE.—The Secretary shall review a sufficient number of cases to allow reasonable inferences, each State's compliance with the requirements of subsection (e)(7)(C)(ii) (relating to discharge and placement for active treatment of certain residents).

"(8) CRITERIA FOR MONITORING STATE WAIVERS.—The Secretary shall develop, by not later than October 1, 1988, criteria and procedures for monitoring State performances in granting waivers pursuant to subsection (b)(4)(C)(ii).".

(b) INCORPORATING REQUIREMENTS INTO STATE PLAN.—

(1) IN GENERAL.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (13)(A), by inserting "which, in the case of nursing facilities, take into account the costs of complying with subsections (b) (other than paragraph (3)(F) thereof), (c), and (d) of section 1919 and provide (in the case of a nursing facility with a waiver under section 1919(b)(4)(C)(ii)) for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care," after "State" the second place it appears; and

(B) by amending paragraph (28) to read as follows:

"(28) provide—

"(A) that any nursing facility receiving payments under such plan must satisfy all the requirements of subsections (b) through (d) of section 1919 as they apply to such facilities;

"(B) for including in 'nursing facility services' at least the items and services specified (or deemed to be specified) by the Secretary under section 1919(f)(7) and making available upon request a description of the items and services so included;

"(C) for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities under this title; and

"(D) for compliance (by the date specified in the respective sections) with the requirements of—

"(i) section 1919(f) (relating to implementation of nursing facility requirements, including paragraph (6)(B), relating to specification of resident assessment instrument);

"(ii) section 1919(g) (relating to responsibility for survey and certification of nursing facilities); and

"(iii) sections 1919(h)(2)(B) and 1919(h)(2)(D) (relating to establishment and application of remedies);".

(2) STATE PLAN AMENDMENT REQUIRED.—A plan of a State under title XIX of the Social Security Act shall not be considered to have met the requirement of section 1902(a)(13)(A) of the Social Security Act (as amended by paragraph (1)(A) of this subsection), as of the first day of a Federal fiscal year (beginning on or after October 1, 1990), unless the State has submitted to the Secretary of Health and Human Services, as of April 1 before the fiscal year, an amendment to such State plan to provide for an appropriate adjustment in payment amounts for nursing facility services furnished during the Federal fiscal year. The Secretary shall, not later than September 30 before the fiscal year concerned, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement under title XIX of the Social Security Act (as amended by this Act).

(c) EVALUATION.—The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1993, on the implementation of the resident assessment process for residents of nursing facilities under the amendments made by this section.

(d) FUNDING.—

(1) IN GENERAL.—Section 1903(a)(2) of such Act (42 U.S.C. 1396b(a)(2)) is amended—

(A) by inserting "(A)" after "(2)", and

(B) by adding at the end the following new subparagraphs:

"(B) notwithstanding paragraph (1) or subparagraph (A), with respect to amounts expended for nursing aide training and competency evaluation programs, described in section 1919(e)(1), regardless of whether the programs are provided in or outside nursing facilities or of the skill of the personnel involved in such programs, an amount equal to 50 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to such programs; plus

"(C) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to preadmission screening and resident review activities conducted by the State under section 1919(e)(7); plus".

(2) ENHANCED FUNDING FOR NURSE AIDE TRAINING.—For calendar quarters during fiscal years 1988 and 1989, with respect to payment under section 1903(a)(2)(B) of the Social Security Act to a State for additional amounts expended by the State under

its plan approved under title XIX of such Act for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such title, any reference to "50 percent" is deemed a reference to the sum of the Federal medical assistance percentage (determined under section 1905(b) of such Act) plus 25 percentage points, but not to exceed 90 percent.

(e) REVISION OF PREVIOUS DEFINITIONS.—Section 1905 of such Act (42 U.S.C. 1396d) is amended—

(1) by amending subsection (c) to read as follows:

"(c) For definition of the term 'nursing facility', see section 1919(a).";

(2) in subsection (d)—

(A) by striking "intermediate care facility services" and inserting "intermediate care facility for the mentally retarded",

(B) by striking "may include services in a public" and inserting "means an",

(C) in paragraph (3), by inserting "in the case of a public institution," after "(3)";

(3) in subsection (f), by striking "skilled" each place it appears; and

(4) by striking subsection (i).

(f) MAKING COVERAGE OF NURSING FACILITY SERVICES MANDATORY FOR ADULTS.—Section 1905(a)(4)(A) of such Act (42 U.S.C. 1396d(a)(4)(A)) is amended by striking "skilled".

(g) ELIMINATION OF PAYMENT DIFFERENTIAL.—Section 1903 of such Act (42 U.S.C. 1396b) is amended—

(1) by striking subsection (h), and

(2) in subsection (a)(1), by striking ", (h), and" and inserting "and".

(h) CLARIFYING TERMINOLOGY.—(1) Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended—

(A) in subparagraph (A)(ii)(VI), by striking "skilled" and by inserting "for the mentally retarded" after "intermediate care facility";

(B) in subparagraph (C)(iv), by striking "intermediate care facility services" and inserting "in an intermediate care facility"; and

(C) in subparagraph (D), by striking "skilled".

(2) Section 1902(a)(13) of such Act (42 U.S.C. 1396a(a)(13)) is amended—

(A) in subparagraph (A), by striking ", skilled nursing facility, and intermediate care facility services" and inserting "services, nursing facility services, and services in an intermediate care facility for the mentally retarded",

(B) in subparagraph (A), by striking ", skilled nursing facility, and intermediate care facility and" and inserting "nursing facility, and intermediate care facility for the mentally retarded and";

(C) in subparagraph (C), by striking "skilled nursing facilities and intermediate care facilities" and inserting "nursing facilities"; and

(D) in subparagraph (D)—

(i) by striking "skilled nursing facility or intermediate care facility" and inserting "nursing facility", and

(ii) by striking "skilled nursing facility services or intermediate care facility services" and inserting "nursing facility services".

(3) Section 1902(a)(30)(B) of such Act (42 U.S.C. 1396a(a)(30)(B)) is amended by striking "skilled nursing facility, intermediate care facility," each place it appears and inserting "intermediate care facility for the mentally retarded,".

(4) Section 1902(e)(3)(B)(i) of such Act (42 U.S.C. 1396a(e)(3)(B)(i)) is amended by striking "skilled nursing facility, or intermediate care facility" and inserting "nursing facility, or intermediate care facility for the mentally retarded".

(5) Section 1902(e)(9) of such Act (42 U.S.C. 1396a(e)(9)) is amended—

(A) in subparagraph (A)(iii), by striking "skilled nursing facility, or intermediate care facility," and inserting "nursing facility, or intermediate care facility for the mentally retarded", and

(B) in subparagraph (B), by striking "skilled nursing facilities, or intermediate care facilities" and inserting "nursing facilities, or intermediate care facilities for the mentally retarded".

(6) Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended—

(A) in paragraph (5), by striking "skilled",

(B) in paragraph (14), by striking ", skilled nursing facility services, and intermediate care facility services" and inserting "and nursing facility services", and

(C) in paragraph (15), by striking "intermediate care facility services (other than such services" and inserting "services in an intermediate care facility for the mentally retarded (other than".

(7) Section 1128B of such Act (42 U.S.C. 1320a-7b) is amended—

(A) in subsection (c), by striking "intermediate care facility" and inserting "nursing facility, intermediate care facility for the mentally retarded", and

(B) in subsection (d)(2)(A), by striking "skilled nursing facility, or intermediate care facility" and inserting "nursing facility, or intermediate care facility for the mentally retarded".

(8) Section 1911 of such Act (42 U.S.C. 1396j) is amended by striking ", intermediate care facility, or skilled nursing facility" each place it appears and inserting "or nursing facility".

(9) Section 1913 of such Act (42 U.S.C. 1396l) is amended—

(A) in the heading, by striking "SKILLED NURSING AND INTERMEDIATE CARE SERVICES" and inserting "NURSING FACILITY SERVICES";

(B) in subsection (a)—

(i) by striking "skilled nursing facility services and intermediate care facility services" and inserting "nursing facility services", and

(ii) by inserting before the period at the end the following: "and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1919";

(C) in subsection (b)(1)—

(i) by striking "skilled nursing or intermediate care facility services" and inserting "nursing facility services", and

(ii) by striking "skilled nursing and intermediate care facilities" and inserting "nursing facilities"; and

(D) in subsection (b)(3), by striking "skilled nursing or intermediate care facility services" and inserting "nursing facility services".

(10) Section 1915(c) of such Act (42 U.S.C. 1396n(c)) is amended—

(A) in paragraph (1), by striking "skilled nursing facility or intermediate care facility" and inserting "nursing facility or intermediate care facility for the mentally retarded";

(B) in paragraph (2)(B)(i), by striking ", skilled nursing facility, or intermediate care facility services" and inserting "services, nursing facility services, or services in an intermediate care facility for the mentally retarded";

(C) in paragraph (2)(B), by striking "need" and all that follows up to the semicolon and inserting "need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded";

(D) in paragraph (2)(C), by striking "or skilled nursing facility or intermediate care facility" and inserting ", nursing facility, or intermediate care facility for the mentally retarded";

(E) in paragraph (2)(C), by striking "or skilled nursing facility or intermediate care facility services" and inserting ", nursing facility services, or services in an intermediate care facility for the mentally retarded";

(F) in paragraph (5), by striking "skilled nursing facility or intermediate care facility" and inserting "nursing facility or intermediate care facility for the mentally retarded"; and

(G) in paragraph (7), by striking "or in skilled nursing or intermediate care facilities" and inserting ", nursing facilities, or intermediate care facilities for the mentally retarded".

(11) Section 1916 of such Act (42 U.S.C. 1396m) is amended, in subsections (a)(2)(C) and (b)(2)(C), by striking "skilled nursing facility, intermediate care facility" and inserting "nursing facility, intermediate care facility for the mentally retarded".

(12) Section 1917 of such Act (42 U.S.C. 1396p), as amended by this title, is further amended—

(A) in subsections (a)(1)(B)(i) and (c)(2)(B)(i), by striking "skilled nursing facility, intermediate care facility" and inserting "nursing facility, intermediate care facility for the mentally retarded", and

(B) in subsection (c)(3)(A), by striking "skilled".

(i) UTILIZATION REVIEW.—Section 1903(i)(4) of such Act (42 U.S.C. 1396b(i)(4)) is amended by striking "or skilled nursing facility" each place it appears.

(j) TECHNICAL ASSISTANCE.—The Secretary of Health and Human Services shall, upon request by a State, furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities.

(k) REPORT ON STAFFING REQUIREMENTS.—The Secretary of Health and Human Services shall report to Congress, by not later

than January 1, 1993, on the progress made in implementing the nursing facility staffing requirements of subparagraph (C) of section 1919(b)(4) of the Social Security Act (as amended by subsection (a) of this section), including the number and types of waivers approved under subparagraph (C)(ii) of such section and the number of facilities which have received waivers.

(l) CONFORMING AMENDMENT.—Section 9516(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "section 1919" and inserting "section 1922"

SEC. 4212. SURVEY AND CERTIFICATION PROCESS.

(a) IN GENERAL.—Section 1919 of the Social Security Act, as inserted by section 4211, is amended by adding at the end the following new subsection:

"(g) SURVEY AND CERTIFICATION PROCESS.—

"(1) STATE AND FEDERAL RESPONSIBILITY.—

"(A) IN GENERAL.—Under each State plan under this title, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d). The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State nursing facilities with the requirements of such subsections.

"(B) EDUCATIONAL PROGRAM.—Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies under this section.

"(C) INVESTIGATION OF ALLEGATIONS OF RESIDENT NEGLECT AND ABUSE AND MISAPPROPRIATION OF RESIDENT PROPERTY.—The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt, review, and investigation of allegations of resident neglect and abuse and misappropriation of resident property by a nurse aide in a nursing facility. If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding.

"(D) CONSTRUCTION.—The failure of the Secretary to establish standards under subsection (f) shall not relieve a State of its responsibility under this subsection.

"(2) SURVEYS.—

"(A) ANNUAL STANDARD SURVEY.—

"(i) IN GENERAL.—Each nursing facility shall be subject to an standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be con-

ducted is subject to a civil money penalty of not to exceed $2,000. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A. The Secretary shall review each State's procedures for scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(ii) CONTENTS.—Each standard survey shall include, for a case-mix stratified sample of residents—

"(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

"(II) written plans of care provided under subsection (b)(2) and an audit of the residents' assessments under subsection (b)(3) to determine the accuracy of such assessments and the adequacy of such plans of care, and

"(III) a review of compliance with residents' rights under subsection (c).

"(iii) FREQUENCY.—

"(I) IN GENERAL.—Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The Statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.

"(II) SPECIAL SURVEYS.—If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

"(B) EXTENDED SURVEYS.—

"(i) IN GENERAL.—Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

"(ii) TIMING.—The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

"(iii) CONTENTS.—In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality

of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d). Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

"(iv) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) on the basis of findings in a standard survey.

"(C) SURVEY PROTOCOL.—Standard and extended surveys shall be conducted—

"(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

"(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

"(D) CONSISTENCY OF SURVEYS.—Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

"(E) SURVEY TEAMS.—

"(i) IN GENERAL.—Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

"(ii) PROHIBITION OF CONFLICTS OF INTEREST.—A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d), or who has a personal or familial financial interest in the facility being surveyed.

"(iii) TRAINING.—The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

"(3) VALIDATION SURVEYS.—

"(A) IN GENERAL.—The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number

to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d), but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

"(B) SCOPE.—With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

"(C) REDUCTION IN ADMINISTRATIVE COSTS FOR SUBSTANDARD PERFORMANCE.—If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1903(a)(2)(D) with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d). A State that is dissatisfied with the Secretary's findings under this subparagraph may obtain reconsideration and review of the findings under section 1116 in the same manner as a State may seek reconsideration and review under that section of the Secretary's determination under section 1116(a)(1).

"(C) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b), (c), and (d), the Secretary may conduct a survey of the facility and, on that basis, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

"(4) INVESTIGATION OF COMPLAINTS AND MONITORING NURSING FACILITY COMPLIANCE.—Each State shall maintain procedures and adequate staff to—

"(A) investigate complaints of violations of requirements by nursing facilities, and

"(B) monitor, on-site, on a regular, as needed basis, a nursing facility's compliance with the requirements of subsections (b), (c), and (d), if—

"(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

"(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

"(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against chronically substandard nursing facilities.

"(5) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies and plans of correction,

"(ii) copies of cost reports of such facilities filed under this title or under title XVIII,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information disclosed under section 1126.

"(B) NOTICE TO OMBUDSMAN.— Each State shall notify the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d), with respect to a nursing facility in the State.

"(C) NOTICE TO PHYSICIANS AND NURSING FACILITY ADMINISTRATOR LICENSING BOARD.—If a State finds that a nursing facility has provided substandard quality of care, the State shall notify—

"(i) the attending physician of each resident with respect to which such finding is made, and

"(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

"(D) ACCESS TO FRAUD CONTROL UNITS.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys and certifications under this subsection.".

(b) POSTING SURVEY RESULTS.—Section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by inserting, after "readily available form and place" in the fifth sentence, the following: ", and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives),".

(c) INCREASING MATCHING PERCENTAGE FOR NURSING HOME SURVEY AND CERTIFICATION ACTIVITIES.—(1) Section 1903(a)(2) of such Act (42 U.S.C. 1396b(a)(2)), as amended by this title, is further amended by adding at the end the following new subparagraph:

"(D) for each calendar quarter during—

"(i) fiscal year 1991, an amount equal to 90 percent,

"(ii) fiscal year 1992, an amount equal to 85 percent,

"(iii) fiscal year 1993, an amount equal to 80 percent, and

"(iv) fiscal year 1994 and thereafter, an amount equal to 75 percent,

of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to State activities under section 1919(g); plus".

(2) Section 1903(r) of such Act (42 U.S.C. 1396b(r)) is amended by striking "paragraphs (2)" each place it appears and inserting "paragraphs (2)(A)".

(3) For purposes of section 1903(a) of the Social Security Act, proper expenses incurred by a State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to medical assistance under title XIX of such Act shall be reimbursable as expenses necessary for the proper and efficient administration of the State plan under that title.

(d) REVISION OF PENALTY PROVISIONS.—(1) Section 1903(g) of such Act (42 U.S.C. 1396b(g)) is amended—

(A) in paragraph (1)—

(i) by striking "or intermediate care facility services" the first place it appears and inserting "or services in an intermediate care facility for the mentally retarded",

(ii) by striking ", skilled nursing facility services for 30 days,",

(iii) by striking ", skilled nursing facility services, or intermediate care facility services" and inserting "or services in an intermediate care facility for the mentally retarded",

(iv) by striking ", skilled nursing facilities, and intermediate care facilities" and inserting "and intermediate care facilities for the mentally retarded";

(B) in paragraph (4)(B), by striking ", skilled nursing facilities, and intermediate care facilities" and inserting "and intermediate care facilities for the mentally retarded";

(C) in paragraph (6)—

(i) by striking subparagraph (B),

(ii) in subparagraph (C), by striking "intermediate care facility services" and inserting "services in an intermediate care facility for the mentally retarded", and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(D) by striking paragraph (7).

(2) Section 1902(a)(31) of such Act (42 U.S.C. 1396a(a)(31)) is amended—

(A) in the matter before subparagraph (A), by striking "skilled nursing facility services" and all that follows through "where" and inserting "services in an intermediate care facility for the mentally retarded (where", and

(B) in subparagraph (B), by striking "skilled nursing or intermediate care facility" and inserting "intermediate care facility for the mentally retarded".

(3) Section 1902(a)(33)(B) of such Act (42 U.S.C. 1396a(a)(33)(B)) is amended by inserting ", except as provided in section 1919(d)," after "(B) that".

(4) The amendments made by this subsection shall not apply to a State until such date (not earlier than October 1, 1990) as of which the Secretary determines that—

(A) the State has specified the resident assessment instrument under section 1919(e)(5) of the Social Security Act, and

(B) the State has begun conducting surveys under section 1919(g)(2) of such Act.

(e) MISCELLANEOUS CONFORMING AMENDMENTS.—(1) Section 1902(a)(44) of such Act (42 U.S.C. 1396a(a)(44)) is amended—

(A) in the matter before subparagraph (A), by striking "skilled nursing facility services, intermediate care facility services" and inserting "services in an intermediate care facility for the mentally retarded", and

(B) in subparagraph (A), by striking "that are intermediate care facility services in an institution for the mentally retarded" and inserting "that are services in an intermediate care facility for the mentally retarded".

(2) Section 1903(a)(7) of such Act (42 U.S.C. 1396b(a)(7)) is amended by inserting "subject to section 1919(g)(3)(B)," after "(7)".

(3) Section 1910 of such Act (42 U.S.C. 1396i) is amended—

(A) by striking "SKILLED NURSING FACILITIES AND" in the heading,

(B) by striking subsection (a), and

(C) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(4) Section 1866(c) of such Act (42 U.S.C. 1395cc(c)) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

SEC. 4213. ENFORCEMENT PROCESS.

(a) IN GENERAL.—Section 1919 of the Social Security Act, as inserted by section 4201 and amended by section 4202, is further amended by adding at the end the following new subsection:

"(h) ENFORCEMENT PROCESS.—

"(1) IN GENERAL.—If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), or (d), and further finds that the facility's deficiencies—

"(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

"(B) do not immediately jeopardize the health or safety of its residents, the State may—

"(i) terminate the facility's participation under the State plan,

"(ii) provide for one or more of the remedies described in paragraph (2), or

"(iii) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility's deficiencies. If a State finds that a nursing facility meets the requirements of subsections (b), (c), and (d), but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(i) for the days in which it finds that the facility was not in compliance with such requirements.

"(2) SPECIFIED REMEDIES.—

"(A) LISTING.—Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

"(i) Denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.

"(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d). Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i)) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

"(iii) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d).

The temporary management under this clause shall not be terminated under subclause (II) until the State has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d).

"(iv) The authority, in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both.

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In ad-

dition, the State may provide for other specified remedies, such as directed plans of correction.

"(B) DEADLINE AND GUIDANCE.—(i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations or otherwise by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.

"(ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

"(C) ASSURING PROMPT COMPLIANCE.—If a nursing facility has not complied with any of the requirements of subsections (b), (c), and (d), within 3 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

"(D) REPEATED NONCOMPLIANCE.—In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2), has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)—

"(i) impose the remedy described in subparagraph (A)(i), and

"(ii) monitor the facility under subsection (g)(4)(B),

until the facility has demonstrated, to the satisfaction of the State, that it is in compliance with the requirements of subsections (b), (c), and (d), and that it will remain in compliance with such requirements.

"(E) FUNDING.—The reasonable expenditures of a State to provide for temporary management and other expenses associated with implementing the remedies described in clauses (iii) and (iv) of subparagraph (A) shall be considered, for purposes of section 1903(a)(7), to be necessary for the proper and efficient administration of the State plan.

"(F) INCENTIVES FOR HIGH QUALITY CARE.—In addition to the remedies specified in this paragraph, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this title. For purposes of section 1903(a)(7), proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this title.

"(3) SECRETARIAL AUTHORITY.—

"(A) FOR STATE NURSING FACILITIES.—With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedies described in clauses (i), (ii), and (iii) of paragraph (2)(A).

"(B) OTHER NURSING FACILITIES.—With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e), and further finds that the facility's deficiencies—

"(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); or

"(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies. If the Secretary finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

"(C) SPECIFIED REMEDIES.—The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

"(i) DENIAL OF PAYMENT.—The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

"(ii) AUTHORITY WITH RESPECT TO CIVIL MONEY PENALTIES.—The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1128A.

"(iii) APPOINTMENT OF TEMPORARY MANAGEMENT.—In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d).

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d).

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

"(D) CONTINUATION OF PAYMENTS PENDING REMEDIATION.—The Secretary may continue payments, over a period of not longer than 6 months, under this title with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d), if—

"(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

"(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(iii) the State agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

"(4) EFFECTIVE PERIOD OF DENIAL OF PAYMENT.—A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d).

"(5) IMMEDIATE TERMINATION OF PARTICIPATION FOR FACILITY WHERE STATE OR SECRETARY FINDS NONCOMPLIANCE AND IMMEDIATE JEOPARDY.—If either the State or the Secretary finds that a nursing facility has not met a requirement of subsection (b), (c), or (d), and finds that the failure immediately jeopardizes the health or safety of its residents, the State and the Secretary shall notify the other of such finding, and the State or the Secretary, respectively, shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan. If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the residents eligible under the State plan consistent with the requirements of subsection (c)(2).

"(6) SPECIAL RULES WHERE STATE AND SECRETARY DO NOT AGREE ON FINDING OF NONCOMPLIANCE.—

"(A) STATE FINDING OF NONCOMPLIANCE AND NO SECRETARIAL FINDING OF NONCOMPLIANCE.—If the Secretary finds that a nursing facility has met all the requirements of subsections (b), (c), and (d), but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

"(B) SECRETARIAL FINDING OF NONCOMPLIANCE AND NO STATE FINDING OF NONCOMPLIANCE.—If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d), and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary—

"(i) may impose any remedies specified in paragraph (3)(C) with respect to the facility, and

"(ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

"(7) SPECIAL RULES FOR TIMING OF TERMINATION OF PARTICIPATION WHERE REMEDIES OVERLAP.—If both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b), (c), and (d), and neither finds that the failure immediately jeopardizes the health or safety of its residents—

"(A)(i) if both find that the facility's participation under the State plan should be terminated, the State's timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate;

"(ii) if the Secretary, but not the State, finds that the facility's participation under the State plan should be terminated, the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D); or

"(iii) if the State, but not the Secretary, finds that the facility's participation under the State plan should be terminated, the State's decision to terminate, and timing of such termination, shall control; and

"(B)(i) if the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, such additional or alternative remedies shall also be applied, or

"(ii) if both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, only the additional or alternative remedies of the Secretary shall apply.

"(8) CONSTRUCTION.—The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such

other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing.

"(9) SHARING OF INFORMATION.—Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under this title and title XVIII, including investigations by State medicaid fraud control units.".

(b) CONFORMING AMENDMENTS.—(1) Section 1902 of such Act (42 U.S.C. 1396a) is amended by striking subsection (i).

(2) Section 1903(i) of such Act (42 U.S.C. 1396b(i)) is amended by striking the period at the end of paragraph (7) and inserting "; or" and by adding at the end the following new paragraph:

"(8) with respect to any amount expended for medical assistance for nursing facility services to reimburse (or otherwise compensate) a nursing facility for payment of a civil money penalty imposed under section 1919(h).".

SEC. 4214. EFFECTIVE DATES.

(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1919 of the Social Security Act, the amendments made by sections 4211 and 4212 (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act, without regard to whether regulations to implement such section are promulgated by such date.

(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1919 of the Social Security Act, the amendments made by section 4213 of this Act apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the date of the enactment of this Act, without regard to whether regulations to implement such amendments are promulgated by such date.

(c) TRANSITIONAL RULE.—In applying the amendments made by this part for services furnished before October 1, 1990—

(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), or (d), is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act.

(d) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for pur-

poses of carrying out this part and implementing the amendments made by this part.

SEC. 4215. ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act).

SEC. 4216. CONSTRUCTION.

Section 1919 of the Social Security Act is amended by adding at the end the following new subsection:

"(i) CONSTRUCTION.—Where requirements or obligations under this section are identical to those provided under section 1819 of this Act, the fulfillment of those requirements or obligations under section 1819 shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.".

SEC. 4217. FINAL REGULATIONS WITH RESPECT TO PLANS OF CORRECTION OR REDUCTION.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(b) The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4218. MEDICAID CERTIFICATIONS AND RECERTIFICATIONS FOR CERTAIN SERVICES.

(a) IN GENERAL.—Section 1902(a)(44) of the Social Security Act (42 U.S.C. 1396a(a)(44)) is amended—

(1) in subparagraph (A)—

(A) by striking "physician certifies" and inserting "physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies", and

(B) by striking "the physician, or a physician assistant or nurse practitioner under the supervision of a physician," and inserting "a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician,"; and

(2) in subparagraph (B), by striking "a physician;" and inserting "a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an em-

ployee of the facility but is working in collaboration with a physician;".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to certifications or recertifications during the period beginning on July 1, 1988, and ending on October 1, 1990.

Subtitle D—Vaccine Compensation

SEC. 4301. SHORT TITLE, REFERENCE.

(a) SHORT TITLE.—This subtitle may be cited as the "Vaccine Compensation Amendments of 1987".

(b) REFERENCE.—Whenever in this subtitle (other than in section 4302(a)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 4302. EFFECTIVE DATE.

(a) IN GENERAL.—Section 323(a) of the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa-1 note) is amended by striking out "Subtitle 2 of such title and this title shall take effect on the effective date of a tax" and all that follows in that section and inserting in lieu thereof "parts A and B of subtitle 2 of such title shall take effect on October 1, 1988 and parts C and D of such title and this title shall take effect on the date of the enactment of the Vaccine Compensation Amendments of 1987.".

(b) REFERENCES.—

(1) Sections 2111, 2115, 2119(a), 2122, 2123, 2125, 2126, 2127, and 2128 (42 U.S.C. 300aa-11, 300aa-15, 300aa-199a), 300aa-22, 300aa-23, 300aa-25, 300aa-26, 300aa-27, 300aa-28) are each amended by striking out "effective date of this subtitle" each place it appears and inserting in lieu thereof "effective date of this part".

(2) Sections 2111(a)(5)(A), 2115(e)(2) and 2116 (42 U.S.C. 300aa-11(a)(5)(A), 300aa-15(e)(2), 300a-16) are each amended by striking out "effective date of this title" each place it appears and inserting in lieu thereof "effective date of this part".

SEC. 4303. COMPENSATION.

(a) SOURCE.—Section 2115 (42 U.S.C. 300aa-15) is amended by adding at the end the following:

"(i) SOURCE OF COMPENSATION.—

"(1) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part shall be made from appropriations under subsection (i).

"(2) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine on or after the effective date of this part shall be made from the Vaccine Injury Compensation Trust Fund established under section 9510 of the Internal Revenue Code of 1986.".

(b) AUTHORIZATION.—Section 2115 (42 U.S.C. 300aa–15) (as amended by subsection (a)) is amended by adding at the end the following:

"(j) AUTHORIZATION.—For the payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part there are authorized to be appropriated $80,000,000 for fiscal year 1989, $80,000,000 for fiscal year 1990, $80,000,000 for fiscal year 1991, and $80,000,000 for fiscal year 1992. Amounts appropriated under this subsection shall remain available until expended.".

(c) MINIMUM.—Section 2115(a)(1) (42 U.S.C. 300a–15(a)(1)) is amended by striking out the last sentence of subparagraphs (A) and (B).

(d) LUMP SUM.—

(1) Section 2115 (42 U.S.C. 300aa–15) is amended—

(A) by striking out the last two sentences after paragraph (4) in subsection (a), and

(B) by adding at the end of the first subsection (f) the following:

"(4)(A) Except as provided in subparagraph (B), payment of compensation under the Program shall be made in a lump sum determined on the basis of the net present value of the elements of the compensation.

"(B) In the case of a payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part the compensation shall be paid in 4 equal annual installments. If the appropriations under subsection (i) are insufficient to make a payment of an annual installment, section 2111(a) shall not apply to a civil action for damages brought by the petitioner entitled to the payment.".

(2)(A) Subsections (e) and (f) of section 2112 (42 U.S.C. 300a–12) are repealed and subsection (g) of such section is redesignated as subsection (e).

(B) Section 2118 (42 U.S.C. 300aa–18) is repealed.

(e) LIMIT.—Section 2115(b) (42 U.S.C. 300aa–15(b)) is amended by striking out "shall only include the compensation described in paragraphs (1)(A) and (2) of subsection (a)" and inserting in lieu thereof the following: "may not include the compensation described in paragraph (1)(B) of subsection (a) and may include attorneys' fees and other costs included in a judgment under subsection (e), except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) and included as attorneys' fees and other costs under subsection (e) may not exceed $30,000".

(f) TERMINATION OF PROGRAM.—Part D of title XXI is amended by adding at the end the following:

"TERMINATION OF PROGRAM

"SEC. 2134. (a) REVIEWS.—The Secretary shall review the number of awards of compensation made under the program to petitioners under section 2111 for vaccine-related injuries and deaths associat-

ed with the administration of vaccines on or after the effective date of this part as follows:

"(1) The Secretary shall review the number of such awards made in the 12-month period beginning on the effective date of this part.

"(2) At the end of each 3-month period beginning after the expiration of the 12-month period referred to in paragraph (1) the Secretary shall review the number of such awards made in the 3-month period.

"(b) REPORT.—

"(1) If in conducting a review under subsection (a) the Secretary determines that at the end of the period reviewed the total number of awards made by the end of that period and accepted under section 2121(a) exceeds the number of awards listed next to the period reviewed in the table in paragraph (2)—

"(A) the Secretary shall notify the Congress of such determination, and

"(B) beginning 180 days after the receipt by Congress of a notification under paragraph (1), no petition for a vaccine-related injury or death associated with the administration of a vaccine on or after the effective date of this part may be filed under section 2111.

Section 2111(a) and part B shall not apply to civil actions for damages for a vaccine-related injury or death for which a petition may not be filed because of subparagraph (B).

"(2) The table referred to in paragraph (1) is as follows:

Period reviewed:	***Total number of awards by the end of the period reviewed***
12 months after the effective date of part	*150*
13th through the 15th month after such date	*188*
16th through the 18th month after such date	*225*
19th through the 21st month after such date	*263*
22nd through the 24th month after such date	*300*
25th through the 27th month after such date	*338*
28th through the 30th month after such date	*375*
31st through the 33rd month after such date	*413*
34th through the 36th month after such date	*450*
37th through the 39th month after such date	*488*
40th through the 42nd month after such date	*525*
43rd through the 45th month after such date	*563*
46th through the 48th month after such date	*600.".*

(g) TECHNICAL.—Section 2115 (42 U.S.C. 300a–15) is amended by redesignating the second subsection (f) and subsection (g) as subsections (g) and (h), respectively.

SEC. 4304. PETITIONS.

(a) APPLICATION OF LIMITS.—Section 2111(a) (42 U.S.C. 300aa–11) is amended by adding at the end the following:

"(8) This subsection applies only to a person who has sustained a vaccine-related injury or death and who is qualified to file a petition for compensation under the Program."

(b) QUALIFICATION.—

(1) Section 2111(b)(1) (42 U.S.C. 300a–11(b)(1)(A)) is amended by striking out "may file" and inserting in lieu thereof "may, if the person meets the requirements of subsection (c)(1), file".

(2) Section 2111(c)(1)(D) (42 U.S.C. 300a-11(c)(1)(D)) is amended (A) by striking out "for more than 1 year" and inserting in lieu thereof "for more than 6 months", (B) by striking out ", (ii)" and inserting in lieu thereof "and", and (C) by striking out "(iii)" and inserting in lieu thereof "(ii)".

(c) WITHDRAWAL.—Section 2121 (42 U.S.C.300a-21) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following:

"(b) WITHDRAWAL OF PETITION.—If the United States Claims Court fails to enter a judgment under section 2112 on a petition filed under section 2111 within 365 days after the date on which the petition was filed, the petitioner may submit to the court a notice in writing withdrawing the petition. Such a notice shall be filed not later than 90 days after the expiration of such 365-day period. A person who has submitted a notice under this subsection may, notwithstanding section 2111(a)(2), thereafter maintain a civil action for damages in a State or Federal court without regard to part B and consistent with otherwise applicable law.".

SEC. 4305. CITIZEN'S ACTIONS.

Section 2131(c) (42 U.S.C. 300a-31(c) is amended by striking out "to any party, whenever the court determines that such award is appropriate" and inserting in lieu thereof "to any plaintiff who substantially prevails on one or more significant issues in the action".

SEC. 4306. VACCINE ADMINISTRATORS.

Section 2111(a) (42 U.S.C. 300a-11) is amended by striking out "vaccine manufacturer" each place it appears and inserting in lieu thereof "vaccine administrator or manufacturer".

SEC. 4307. COURT JURISDICTION.

Subtitle 2 of title XXI is amended as follows:

(1) Section 2111(a)(1) (42 U.S.C. 300aa-11(a)(1)) is amended by striking out "with the United States district court for the district in which the petitioner resides or the injury or death occurred" and inserting in lieu thereof "with the United States Claims Court".

(2) Section 2111(a)(2)(A)(ii) (42 U.S.C. 300aa-11(a)(2)(A)(ii)) is amended by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court".

(3) Section 2112 (42 U.S.C. 300aa-12) is amended—

(A) in subsection (a), by striking out "district courts of the United States" and inserting in lieu thereof "United States Claims Court" and by striking out "the courts" and inserting in lieu thereof "the court",

(B) in subsection (c)(1), by striking out "the district court of the United States in which the petition is filed" and inserting in lieu thereof "the United States Claims Court", and

(C) in subsection (g), by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court" and by striking out "for the circuit in which the court is located" and inserting in lieu thereof "for the Federal Circuit".

(4) Section 2113(c) (42 U.S.C. 300aa-13(c)) is amended by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court".

(5) Section 2115(e)(1) (42 U.S.C. 300aa-15(e)(1)) is amended by striking out "of a court" and inserting in lieu thereof "of the United States Claims Court".

(6) Paragraph (2) of subsection (f) of section 2115 (42 U.S.C. 300aa-15) is amended by striking out "district court of the United States" and inserting in lieu thereof "United States Claims Court".

(7) Section 2117(a) (42 U.S.C. 300aa-17(a)) is amended by striking out "(1)", by running in the text of paragraph (1) into the subsection heading, and by striking out paragraph (2).

(8) Section 2121(a) (42 U.S.C. 300aa-21(a)) is amended by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court" and by striking out "a court" each place it occurs and inserting in lieu thereof "the court"

(9) Section 2123(e) (42 U.S.C. 300aa-23(e)) is amended by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court".

Subtitle E—Rural Health

SEC. 4401. OFFICE OF RURAL HEALTH POLICY.

Title VII of the Social Security Act is amended by adding at the end thereof the following new section:

"OFFICE OF RURAL HEALTH POLICY

"SEC. 711. (a) There shall be established in the Department of Health and Human Services (in this section referred to as the "Department") an Office of Rural Health Policy (in this section referred to as the 'Office'). The Office shall be headed by a Director, who shall advise the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under titles XVIII and XIX on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas.

"(b) In addition to advising the Secretary with respect to the matters specified in subsection (a), the Director, through the Office, shall—

"(1) oversee compliance with the requirements of section 1102(b) of this Act and section 4083 of the Omnibus Budget Reconciliation Act of 1987,

"(2) establish and maintain a clearinghouse for collecting and disseminating information on—

"(A) rural health care issues,

"(B) research findings relating to rural health care, and

"(C) innovative approaches to the delivery of health care in rural areas,

"(3) coordinate the activities within the Department that relate to rural health care, and

"(4) provide information to the Secretary and others in the Department with respect to the activities, of other Federal departments and agencies, that relate to rural health care.".

SEC. 4402. IMPACT ANALYSES OF MEDICARE AND MEDICAID RULES AND REGULATIONS ON SMALL RURAL HOSPITALS.

(a) IN GENERAL.—Section 1102 of the Social Security Act (42 U.S.C. 1302) is amended—

(1) by inserting "(a)" after "SEC. 1102.", and

(2) by adding at the end thereof the following new subsection:

"(b)(1) Whenever the Secretary publishes a general notice of proposed rulemaking for any rule or regulation proposed under title XVIII, title XIX, or part B of this title that may have a significant impact on the operations of a substantial number of small rural hospitals, the Secretary shall prepare and make available for public comment an initial regulatory impact analysis. Such analysis shall describe the impact of the proposed rule or regulation on such hospitals and shall set forth, with respect to small rural hospitals, the matters required under section 603 of title 5, United States Code, to be set forth with respect to small entities. The initial regulatory impact analysis (or a summary) shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

"(2) Whenever the Secretary promulgates a final version of a rule or regulation with respect to which an initial regulatory impact analysis is required by paragraph (1), the Secretary shall prepare a final regulatory impact analysis with respect to the final version of such rule or regulation. Such analysis shall set forth, with respect to small rural hospitals, the matters required under section 604 of title 5, United States Code, to be set forth with respect to small entities. The Secretary shall make copies of the final regulatory impact analysis available to the public and shall publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

"(3) If a regulatory flexibility analysis is required by chapter 6 of title 5, United States Code, for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.".

(b) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to regulations proposed more than 30 days after the date of the enactment of this Act.

SEC. 4403. SET ASIDE FOR EXPERIMENTS AND DEMONSTRATION PROJECTS RELATING TO RURAL HEALTH CARE ISSUES.

(a) SET ASIDE.—Not less than ten percent of the total amounts expended in each fiscal year by the Secretary of Health and Human Services (in this section referred to as the "Secretary") after October 1, 1988, with respect to experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 and the experiments and demonstration projects authorized by the Social Security Amendments of 1972 shall be expended for experiments and demonstration projects relating exclusively or substan-

tially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of small rural hospitals, the effect of medicare payment policies on the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

(b) AGENDA.—The Secretary of Health and Human Services shall establish an agenda of experiments and demonstration projects, relating exclusively or substantially to rural health issues, that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1875(b) of the Social Security Act. The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such experiments and projects in the current and most recently completed fiscal years.

TITLE V—ENERGY AND ENVIRONMENT PROGRAMS

Subtitle A—Nuclear Waste Amendments

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the "Nuclear Waste Policy Amendments Act of 1987".

SEC. 5002. DEFINITIONS.

Section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101) is amended by adding at the end the following new paragraphs:

"(30) The term 'Yucca Mountain site' means the candidate site in the State of Nevada recommended by the Secretary to the President under section 112(b)(1)(B) on May 27, 1986.

"(31) The term 'affected unit of local government' means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

"(32) The term 'Negotiator' means the Nuclear Waste Negotiator.

"(33) As used in title IV, the term 'Office' means the Office of the Nuclear Waste Negotiator established under title IV of this Act.

"(34) The term 'monitored retrievable storage facility' means the storage facility described in section 141(b)(1).".

PART A—REDIRECTION OF THE NUCLEAR WASTE PROGRAM

SEC. 5011. FIRST REPOSITORY.

(a) SITE SPECIFIC ACTIVITIES.—Title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10121-10171) is amended by adding at the end the following new subtitle:

"SUBTITLE E—REDIRECTION OF THE NUCLEAR WASTE PROGRAM

"SELECTION OF YUCCA MOUNTAIN SITE

"SEC. 160. (a) IN GENERAL.—(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

"(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

"(b) Effective on the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 170.".

(b) SITE RECOMMENDATION TO THE PRESIDENT.—Section 112(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132(b)) is amended by—

(1) striking out paragraph (1)(C) and redesignating the subsequent subparagraphs accordingly; and

(2) in subparagraph (C), (as redesignated) by striking "subparagraphs (B) and (C)" and inserting "subparagraph (B)".

(c) TERMINATION OF CANDIDATE SITE SCREENING.—Section 112 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132) is amended by striking all of subsection (d) and redesignating subsequent subsections accordingly.

(d) TIMELY SITE CHARACTERIZATION.—Section 112 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132) is amended by striking all of subsection (f) and redesignating subsequent subsections accordingly.

(e) SITE CHARACTERIZATION.—Section 113(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(a)) is amended—

(1) by striking "State involved" and all that follows through "tribe involved" and inserting "State of Nevada"; and

(2) by striking "beginning" and all that follows through "geological media" and inserting "at the Yucca Mountain site".

(f) COMMISSION AND STATES.—Section 113(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(b)) is amended—

(1) in paragraph (1)—

(A) by striking "any candidate site" and inserting "the Yucca Mountain site";

(B) by striking "either" and all that follows through "may be" and insert "the Governor or legislature of the State of Nevada";

(2) in paragraph (2), by striking "at any candidate site" and inserting "at the Yucca Mountain site"; and

(3) in paragraph (3)—

(A) by striking "a candidate site" and inserting "the Yucca Mountain site";

(B) by striking "either"; and

(C) by striking "the State" and all that follows through "may be" and inserting "the State of Nevada".

(g) RESTRICTIONS.—Section 113(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(c)) is amended—

(1) in paragraph (1)—

(A) by striking "any candidate site" and inserting "the Yucca Mountain site"; and

(B) by striking "such candidate site" each place it appears and inserting "such site";

(2) in paragraph (2), by striking "candidate" each place it appears; and

(3) by striking paragraphs (3) and (4) and inserting the following:

"(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

"(A) terminate all site characterization activities at such site;

"(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

"(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

"(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

"(E) suspend all future benefits payments under subtitle F with respect to such site; and

"(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority."

(h) HEARINGS AND PRESIDENTIAL RECOMMENDATION.—Section 114(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(a)) is amended—

(1) in paragraph (1)—

(A) by striking "each site" through "development of a repository" and inserting "the Yucca Mountain site";

(B) by striking "in which such site is located";

(C) by striking "not less than 3" and all that follows through "subsequent repositories" and inserting "the Yucca Mountain site";

(D) by striking "in which such site" and all that follows through "case may be" and insert "of Nevada";

(E) by striking the sentence beginning with "In making site recommendations";

(F) by amending subparagraph (D) to read as follows:

"(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;"; and

(G) in subparagraph (H), by striking "the State" and all that follows through the end of the sentence and inserting "the State of Nevada";

(2) by striking paragraphs (2) and (3) and inserting the following:

"(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

"(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1).''; and

(3) in paragraph (4) by—

(A) striking "(4)(A)" and inserting "(3)(A)";

(B) striking "any site under this subsection" and inserting "the Yucca Mountain site"; and

(C) by striking "report" and inserting "statement".

(i) SUBMISSION OF APPLICATION.—Section 114(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(b)) is amended—

(1) by striking "a site for a repository" and inserting "the Yucca Mountain site"; and

(2) by striking "in which" and all that follows through "may be," and inserting "of Nevada".

(j) COMMISSION ACTION.—Section 114(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) is amended in the first sentence—

(1) by striking "than—" and all that follows through "(2) the expiration" and inserting "than the expiration"; and

(2) by striking "(e)(2); whichever occurs later" and inserting "(e)(2)".

(k) PROJECT DECISION SCHEDULE.—Section 114(e) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(e)) is amended by striking "repository involved" and inserting "repository".

(l) ENVIRONMENTAL IMPACT STATEMENT.—Section 114(f) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(f)) is amended to read as follows:

"(f) ENVIRONMENTAL IMPACT STATEMENT.—(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

"(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this Act shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

"(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this subtitle.

"(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this subtitle shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"(5) Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

"(6) In any such statement prepared with respect to the repository to be constructed under this subtitle, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.".

(m) ON-SITE REPRESENTATIVE.—Section 117 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10137) is amended by adding at the end the following new subsection:

"(d) ON-SITE REPRESENTATIVE.—The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this title an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.".

SEC. 5012. SECOND REPOSITORY.

Subtitle E of title I of the Nuclear Waste Policy Act of 1982 (as created by section 5011 of this Act) is amended by adding at the end the following new section:

"SITING A SECOND REPOSITORY

"SEC. 161. (a) CONGRESSIONAL ACTION REQUIRED.—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

"(b) REPORT.—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

"(c) TERMINATION OF GRANITE RESEARCH.—Not later than 6 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall phase out in an orderly manner funding for all research programs in existence on such date of enactment designed to evaluate the suitability of crystalline rock as a potential repository host medium.

"(d) ADDITIONAL SITING CRITERIA.—In the event that the Secretary at any time after such date of enactment considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 112) such potentially disqualifying factors as—

"(1) seasonal increases in population;

"(2) proximity to public drinking water supplies, including those of metropolitan areas; and

"(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.".

PART B—MONITORED RETRIEVABLE STORAGE

SEC. 5021. AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE.

Subtitle C of Nuclear Waste Policy Act of 1982 is amended by adding at the end the following new sections:

"AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE

"SEC. 142. (a) NULLIFICATION OF OAK RIDGE SITING PROPOSAL.—The proposal of the Secretary (EC–1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 144 and 145, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

"(b) AUTHORIZATION.—The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 143 through 149.

"MONITORED RETRIEVABLE STORAGE COMMISSION

"SEC. 143. (a) ESTABLISHMENT.—(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the 'MRS Commission'), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

"(B)(i) Members of the MRS Commission shall be appointed not later than 30 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable stor-

age facility as a part of the Nation's nuclear waste management system.

"(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this Act. In preparing the report under this subparagraph, the MRS Commission shall—

"(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

"(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

"(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

"(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this Act, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

"(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this Act. Such comparison shall take into consideration the impact on—

"(A) repository design and construction;

"(B) waste package design, fabrication and standardization;

"(C) waste preparation;

"(D) waste transportation systems;

"(E) the reliability of the national system for the disposal of radioactive waste;

"(F) the ability of the Secretary to fulfill contractual commitments of the Department under this Act to accept spent nuclear fuel for disposal; and

"(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

"(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on June 1, 1989.

"(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

"(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS–18 of the General

Schedule, for such staff as may be necessary to carry out its functions.

"(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

"(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

"(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

"(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5, United States Code, at rates and under such rules as the MRS Commission considers reasonable.

"(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

"SURVEY

"SEC. 144. After the MRS Commission submits its report to the Congress under section 143, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

"(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act;

"(2) minimize the impacts of transportation and handling of such fuel and waste;

"(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

"(4) impose minimal adverse effects on the local community and the local environment;

"(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

"(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

"(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

"SITE SELECTION

"SEC. 145. (a) IN GENERAL.—The Secretary may select the site evaluated under section 144 that the Secretary determines on the basis of available information to be the most suitable for a moni-

tored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

"(b) LIMITATION.—The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 114(a).

"(c) SITE SPECIFIC ACTIVITIES.—The Secretary may conduct such site specific activities at each site surveyed under section 144 as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

"(d) ENVIRONMENTAL ASSESSMENT.—Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

"(e) NOTIFICATION BEFORE SELECTION.—(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

"(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

"(f) NOTIFICATION OF SELECTION.—The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

"(g) LIMITATION.—No monitored retrievable storage facility authorized pursuant to section 142(b) may be constructed in the State of Nevada.

"NOTICE OF DISAPPROVAL

"SEC. 146. (a) IN GENERAL.—The selection of a site under section 145 shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 145 shall not be effective except as provided under section 115(c).

"(b) REFERENCES.—For purposes of carrying out the provisions of this subsection, references in section 115(c) to a repository shall be considered to refer to a monitored retrievable storage facility and

references to a notice of disapproval of a repository site designation under section 116(b) or 118(a) shall be considered to refer to a notice of disapproval under this section.

"BENEFITS AGREEMENT

"SEC. 147. Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 145, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 170.

"CONSTRUCTION AUTHORIZATION

"SEC. 148. (a) ENVIRONMENTAL IMPACT STATEMENT.—(1) Once the selection of a site is effective under section 146, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

"(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 141(b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 142(b).

"(b) APPLICATION FOR CONSTRUCTION LICENSE.—Once the selection of a site for a monitored retrievable storage facility is effective under section 146, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this Act affecting such facility.

"(c) LICENSING.—Any monitored retrievable storage facility authorized pursuant to section 142(b) shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

"(d) LICENSING CONDITIONS.—Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

"(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 115(d);

"(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

"(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not

exceed 10,000 metric tons of heavy metal until a repository under this Act first accepts spent nuclear fuel or solidified high-level radioactive waste; and

"(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

"FINANCIAL ASSISTANCE

"SEC. 149. The provisions of section 116(c) or 118(b) with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.".

PART C—BENEFITS

SEC. 5031. BENEFITS.

Title I of the Nuclear Waste Policy Act of 1982 is further amended by adding at the end the following new subtitles:

"Subtitle F—Benefits

"BENEFITS AGREEMENTS

"SEC. 170. (a) IN GENERAL.—(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

"(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

"(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

"(4) Benefits and payments under this subtitle may be made available only in accordance with a benefits agreement under this section.

"(b) AMENDMENT.—A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 173.

"(c) AGREEMENT WITH NEVADA.—The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

"(d) MONITORED RETRIEVABLE STORAGE.—The Secretary shall offer to enter into a benefits agreement relating to a monitored re-

trievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

"(e) LIMITATION.—Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

"(f) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

"CONTENT OF AGREEMENTS

"SEC. 171. (a) IN GENERAL.—(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under title I, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 170 in accordance with the following schedule:

"BENEFITS SCHEDULE

(Amounts in millions)

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	$5	$10
(B) Upon first spent fuel receipt	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20

"(2) For purposes of this section, the term—

"(A) 'MRS' means a monitored retrievable storage facility,

"(B) 'spent fuel' means high-level radioactive waste or spent nuclear fuel, and

"(C) 'first spent fuel receipt' does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

"(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

"(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

"(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this title before January 1, 1989, shall be made on or after such date.

"(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

"(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

"(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 170 covering such payments.

"(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

"(b) CONTENTS.—A benefits agreement under section 170 shall provide that—

"(1) a Review Panel be established in accordance with section 172;

"(2) the State or Indian tribe that is party to such agreement waive its rights under title I to disapprove the recommendation of a site for a repository;

"(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

"(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

"(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 116(c)(1)(B)(ii), 116(c)(2), 118(b)(2)(A)(ii), and 118(b)(3).

"(c) The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 170 shall constitute a commitment by the United States to make payments in accordance with such agreement.

"REVIEW PANEL

"SEC. 172. (a) IN GENERAL.—The Review Panel required to be established by section 171(b)(1) of this Act shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

"(1) 2 members selected by the Governor of such State or governing body of such Indian tribe;

"(2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;

"(3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and

"(4) 1 member to represent other public interests, to be selected by the Secretary.

"(b) TERMS.—(1) The members of the Review Panel shall serve for terms of 4 years each.

"(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation

for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

"(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

"(c) DUTIES.—The Review Panel shall—

"(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

"(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

"(3) recommend corrective actions to the Secretary;

"(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

"(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

"(d) INFORMATION.—The Secretary shall promptly make available promptly any information in the Secretary's possession requested by the Panel or its Chairman.

"(e) FEDERAL ADVISORY COMMITTEE ACT.—The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this title.

"TERMINATION

"SEC. 173. (a) IN GENERAL.—The Secretary may terminate a benefits agreement under this title if—

"(1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this Act; or

"(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

"(b) TERMINATION BY STATE OR INDIAN TRIBE.—A State or Indian tribe may terminate a benefits agreement under this title only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act or the Secretary determines that the Commission cannot license the facility within a reasonable time.

"(c) DECISIONS OF THE SECRETARY.—Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

"Subtitle G—Other Benefits

"CONSIDERATION IN SITING FACILITIES

"SEC. 174. The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

"REPORT

"SEC. 175. (a) IN GENERAL.—Within one year of the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987,

the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 171, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

"(b) IMPACTS TO BE CONSIDERED.—Potential impacts to be addressed in the report under this subsection (a) shall include impacts on—

"(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

"(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

"(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

"(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

"(5) medical care, including emergency services and hospitals;

"(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

"(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

"(8) vocational training and employment services;

"(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

"(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

"(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

"(12) availability of energy;

"(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

"(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility.".

SEC. 5032. PARTICIPATION OF STATES.

(a) FINANCIAL ASSISTANCE.—Section 116(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10136(c)) is amended to read as follows:

"(c) FINANCIAL ASSISTANCE.—(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 117 or authorized by written agreement entered into pursuant to section 117(c). Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

"(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

"(i) to review activities taken under this subtitle with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

"(ii) to develop a request for impact assistance under paragraph (2);

"(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

"(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

"(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

"(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

"(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

"(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

"(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

"(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 113(b).

"(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

"(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

"(ii) the procedures to be followed in providing such assistance.

"(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

"(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

"(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

"(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

"(ii) the date on which the Yucca Mountain site is disapproved under section 115; or

"(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

"(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

"(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

"(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

"(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

"(iii) such funds as may be provided under an agreement entered into under title IV.

"(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

"(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.".

SEC. 5033. PARTICIPATION OF INDIAN TRIBES.

Section 118(b)(5) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10138(b)(5)) is amended by—

(1) striking "or" at the end of clause (ii); and

(2) adding at the end the following new clause:

"(iv) the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987;".

PART D—NUCLEAR WASTE NEGOTIATOR

SEC. 5041. NUCLEAR WASTE NEGOTIATOR.

The Nuclear Waste Policy Act of 1982 is amended by adding at the end the following new title:

"TITLE IV—NUCLEAR WASTE NEGOTIATOR

"DEFINITION

"SEC. 401. For purposes of this title, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, and the Republic of the Marshall Islands.

"THE OFFICE OF THE NUCLEAR WASTE NEGOTIATOR

"SEC. 402. (a) ESTABLISHMENT.—There is established within the Executive Office of the President the Office of the Nuclear Waste Negotiator.

"(b) THE NUCLEAR WASTE NEGOTIATOR.—(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5, United States Code.

"(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

"DUTIES OF THE NEGOTIATOR

"SEC. 403. (a) NEGOTIATIONS WITH POTENTIAL HOSTS.—(1) The Negotiator shall—

"(A) seek to enter into negotiations on behalf of the United States, with—

"(i) the Governor of any State in which a potential site is located; and

"(ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

"(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would

agree to host a repository or monitored retrievable storage facility within such State or reservation.

"(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this title to the Governor shall be considered to refer instead to such other person or entity.

"(b) CONSULTATION WITH AFFECTED STATES, SUBDIVISIONS OF STATES, AND TRIBES.—In addition to entering into negotiations under subsection (a), the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

"(c) CONSULTATION WITH OTHER FEDERAL AGENCIES.—The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

"(d) PROPOSED AGREEMENT.—(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) and an environmental assessment prepared under section 404(a) for the site concerned.

"(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 116(c), 117, and 118(b).

"(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.

"(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

"(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this title only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2012 et seq.), title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.

"ENVIRONMENTAL ASSESSMENT OF SITES

"SEC. 404. (a) IN GENERAL.—Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 403(a).

"(b) CONTENTS.—(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

"(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

"(c) JUDICIAL REVIEW.—The issuance of an environmental assessment under subsection (a) shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code, and section 119.

"(d) PUBLIC HEARINGS.—(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

"(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) and the site characterization plan described in section 113(b)(1).

"(e) PUBLIC AVAILABILITY.—Each environmental assessment prepared under subsection (a) shall be made available to the public.

"(f) EVALUATION OF SITES.—(1) In preparing an environmental assessment under subsection (a), the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

"(A) such preliminary boring or excavation activities were in progress on or before the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987; or

"(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this Act or any other law.

"(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

"SITE CHARACTERIZATION; LICENSING

"SEC. 405. (a) SITE CHARACTERIZATION.—Upon enactment of legislation to implement an agreement to site a repository negotiated under section 403(a), the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 113, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

"(b) LICENSING.—(1) Upon the completion of site characterization activities carried out under subsection (a), the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.

"(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

"MONITORED RETRIEVABLE STORAGE

"SEC. 406. (a) CONSTRUCTION AND OPERATION.—Upon enactment of legislation to implement an agreement negotiated under section 403(a) to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

"(b) FINANCIAL ASSISTANCE.—The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

"ENVIRONMENTAL IMPACT STATEMENT

"SEC. 407. (a) IN GENERAL.—Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 405(b) shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(b) PREPARATION.—A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

"(c) ADOPTION.—(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

"(2)(A) In any such statement prepared with respect to a repository to be constructed under this title at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

"(B) In any such statement prepared with respect to a repository to be constructed under this title at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca

Mountain site as an alternate to such site in the preparation of such statement.

"ADMINISTRATIVE POWERS OF THE NEGOTIATOR

"SEC. 408. In carrying out his functions under this title, the Negotiator may—

"(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

"(2) obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code;

"(3) promulgate such rules and regulations as may be necessary to carry out such functions;

"(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

"(5) for purposes of performing administrative functions under this title, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

"(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;

"(7) adopt an official seal, which shall be judicially noticed;

"(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

"(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

"(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

"COOPERATION OF OTHER DEPARTMENTS AND AGENCIES

"SEC. 409. Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this title.

"TERMINATION OF THE OFFICE

"SEC. 410. The Office shall cease to exist not later than 30 days after the date 5 years after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 411. Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this title.".

PART E—NUCLEAR WASTE TECHNICAL REVIEW BOARD

SEC. 5051. NUCLEAR WASTE TECHNICAL REVIEW BOARD.

The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) is further amended by adding at the end the following new title:

"TITLE V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

"DEFINITIONS

"SEC. 501. As used in this title:

"(1) The term 'Chairman' means the Chairman of the Nuclear Waste Technical Review Board.

"(2) The term 'Board' means the Nuclear Waste Technical Review Board established under section 502.

"NUCLEAR WASTE TECHNICAL REVIEW BOARD

"SEC. 502. (a) ESTABLISHMENT.—There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

"(b) MEMBERS.—(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

"(2) The President shall designate a member of the Board to serve as chairman.

"(3)(A) The National Academy of Sciences shall, not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

"(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

"(C)(i) Each person nominated for appointment to the Board shall be—

"(I) eminent in a field of science or engineering, including environmental sciences; and

"(II) selected solely on the basis of established records of distinguished service.

"(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this title.

"(iii) No person shall be nominated for appointment to the Board who is an employee of—

"(I) the Department of Energy;

"(II) a national laboratory under contract with the Department of Energy; or

"(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

"(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

"(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

"FUNCTIONS

"SEC. 503. The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, including—

"(1) site characterization activities; and

"(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

"INVESTIGATORY POWERS

"SEC. 504. (a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

"(b) PRODUCTION OF DOCUMENTS.—(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this title.

"(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

"COMPENSATION OF MEMBERS

"SEC. 505. (a) IN GENERAL.—Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

"(b) TRAVEL EXPENSES.—Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

"STAFF

"SEC. 506. (a) CLERICAL STAFF.—(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

"(2) Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competi-

tive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(b) PROFESSIONAL STAFF.—(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

"(2) Not more than 10 professional staff members may be appointed under this subsection.

"(3) Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

"SUPPORT SERVICES

"SEC. 507. (a) GENERAL SERVICES.—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

"(b) ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.—The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

"(c) ADDITIONAL SUPPORT.—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

"(d) MAILS.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(e) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

"REPORT

"SEC. 508. The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 509. Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this title.

"TERMINATION OF THE BOARD

"SEC. 510. The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.".

PART F—MISCELLANEOUS

SEC. 5061. TRANSPORTATION.

Title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10121-10171) is further amended by adding at the end the following new subtitle:

"Subtitle H—Transportation

"TRANSPORTATION

"SEC. 180. (a) No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under subtitle A or under subtitle C except in packages that have been certified for such purpose by the Commission.

"(b) The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C.

"(c) The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.".

SEC. 5062. TRANSPORTATION OF PLUTONIUM BY AIRCRAFT THROUGH UNITED STATES AIR SPACE.

(a) IN GENERAL.—Notwithstanding any other provision of law, no form of plutonium may be transported by aircraft through the air space of the United States from a foreign nation to a foreign nation unless the Nuclear Regulatory Commission has certified to Congress that the container in which such plutonium is transported is safe, as determined in accordance with subsection (b), the second undesignated paragraph under section 201 of Public Law 94-79 (89 Stat. 413; 42 U.S.C. 5841 note), and all other applicable laws.

(b) RESPONSIBILITIES OF THE NUCLEAR REGULATORY COMMISSION.—

(1) DETERMINATION OF SAFETY.—The Nuclear Regulatory Commission shall determine whether the container referred to in subsection (a) is safe for use in the transportation of plutonium by aircraft and transmit to Congress a certification for the purposes of such subsection in the case of each container determined to be safe.

(2) TESTING.—In order to make a determination with respect to a container under paragraph (1), the Nuclear Regulatory Commission shall—

(A) require an actual drop test from maximum cruising altitude of a full-scale sample of such container loaded with test materials; and

(B) require an actual crash test of a cargo aircraft full loaded with full-scale samples of such container loaded with test material unless the Commission determines, after consultation with an independent scientific review panel, that the stresses on the container produced by other tests used in developing the container exceed the stresses which would occur during a worst case plutonium air shipment accident.

(3) LIMITATION.—The Nuclear Regulatory Commission may not certify under this section that a container is safe for use in the transportation of plutonium by aircraft if the container ruptured or released its contents during testing conducted in accordance with paragraph (2).

(4) EVALUATION.—The Nuclear Regulatory Commission shall evaluate the container certification required by title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.) and subsection (a) in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.) and all other applicable law.

(c) CONTENT OF CERTIFICATION.—A certification referred to in subsection (a) with respect to a container shall include—

(1) the determination of the Nuclear Regulatory Commission as to the safety of such container;

(2) a statement that the requirements of subsection (b)(2) were satisfied in the testing of such container; and

(3) a statement that the container did not rupture or release its contents into the environment during testing.

(d) DESIGN OF TESTING PROCEDURES.—The tests required by subsection (b) shall be designed by the Nuclear Regulatory Commission to replicate actual worst case transportation conditions to the maximum extent practicable. In designing such tests, the Commission shall provide for public notice of the proposed test procedures, provide a reasonable opportunity for public comment on such procedures, and consider such comments, if any.

(e) TESTING RESULTS: REPORTS AND PUBLIC DISCLOSURE.—The Nuclear Regulatory Commission shall transmit to Congress a report on the results of each test conducted under this section and shall make such results available to the public.

(f) ALTERNATIVE ROUTES AND MEANS OF TRANSPORTATION.—With respect to any shipments of plutonium from a foreign nation to a foreign nation which are subject to United States consent rights contained in an Agreement for Peaceful Nuclear Cooperation, the Presi-

dent is authorized to make every effort to pursue and conclude arrangements for alternative routes and means of transportation, including sea shipment. All such arrangements shall be subject to stringent physical security conditions, and other conditions designed to protect the public health and safety, and provisions of this section, and all other applicable laws.

(g) INAPPLICABILITY TO MEDICAL DEVICES.—Subsections (a) through (e) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

(h) INAPPLICABILITY TO MILITARY USES.—Subsections (a) through (e) shall not apply to plutonium in the form of nuclear weapons nor to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

(i) INAPPLICABILITY TO PREVIOUSLY CERTIFIED CONTAINERS.—This section shall not apply to any containers for the shipment of plutonium previously certified as safe by the Nuclear Regulatory Commission under Public Law 94-79 (89 Stat. 413; 42 U.S.C. 5841 note).

(j) PAYMENT OF COSTS.—All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through United States airspace in containers specified by the Commission.

SEC. 5063. SUBSEABED DISPOSAL.

Title II of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10191-10203) is amended by adding at the end the following new section:

"SUBSEABED DISPOSAL

"SEC. 224. (a) STUDY.—Within 270 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste. The report under this subsection shall include—

"(1) an assessment of the current state of knowledge of subseabed disposal as an alternative technology for disposal of spent nuclear fuel and high-level radioactive waste;

"(2) an estimate of the costs of subseabed disposal;

"(3) an analysis of institutional factors associated with subseabed disposal, including international aspects of a decision of the United States to proceed with subseabed disposal as an option for nuclear waste management;

"(4) a full discussion of the environmental and public health and safety aspects of subseabed disposal;

"(5) recommendations on alternative ways to structure an effort in research, development, and demonstration with respect to subseabed disposal; and

"(6) the recommendations of the Secretary with respect to research, development and demonstration in subseabed disposal of spent nuclear fuel and high-level radioactive waste.

"(b) OFFICE OF SUBSEABED DISPOSAL RESEARCH.—(1) There is hereby established an Office of Subseabed Disposal Research within

the Office of Energy Research of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Energy Research, and compensated at a rate determined by applicable law.

"(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Energy Research, and the first such Director shall be appointed within 30 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

"(3) In carrying out his responsibilities under this Act, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

"(4)(A) Within 60 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

"(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

"(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

"(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

"(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

"(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

"(5) The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office.".

SEC. 5604. DRY CASK STORAGE.

(a) STUDY.—During the period between the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 and October 1, 1988, the Secretary of Energy (hereinafter in this section referred to as the "Secretary") shall conduct a study and evaluation of the use of dry cask storage technology at the sites of civilian nuclear power reactors for the temporary storage of spent nuclear fuel until such time as a permanent geologic repository has been constructed and licensed by the Nuclear Regulatory Commission (hereinafter in this section referred to as the "Commission") and is capable of receiving spent nuclear fuel. The Secretary shall report to Congress on the study under this paragraph by October 1, 1988.

(b) CONTENTS OF STUDY.—In conducting the study under paragraph (1) the Secretary shall—

(1) consider the costs of dry cask storage technology, the extent to which dry cask storage on the site of civilian nuclear power reactors will affect human health and the environment, the extent to which the storage on the sites of civilian nuclear power reactors affects the costs and risk of transporting spent nuclear fuel to a central facility such as a monitored retrievable storage facility, and any other factors the Secretary considers appropriate;

(2) consider the extent to which amounts in the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) can be used, and should be used, to provide funds to construct, operate, maintain, and safeguard spent nuclear fuel in dry cask storage at the sites for civilian nuclear power reactors;

(3) consult with the Commission and include the views of the Commission in the report under paragraph (1); and

(4) solicit the views of State and local governments and the public.

SEC. 5065. AMENDMENTS TO THE TABLE OF CONTENTS.

The table of contents of the Nuclear Waste Policy Act of 1982 is amended by—

(1) adding at the end of subtitle C the following new sections:

"Sec. 142. Authorization of monitored retrievable storage.
"Sec. 143. Monitored Retrievable Storage Commission.
"Sec. 144. Survey.
"Sec. 145. Site selection.
"Sec. 146. Notice of disapproval.
"Sec. 147. Benefits agreement.
"Sec. 148. Construction authorization.
"Sec. 149. Financial assistance.";

(2) adding at the end of title I the following new subtitles:

"Subtitle E—Redirection of the Nuclear Waste Program

"Sec. 160. Selection of Yucca Mountain site.
"Sec. 161. Siting a second repository.

"Subtitle F—Benefits

"Sec. 170. Benefits agreements.
"Sec. 171. Content of agreements.
"Sec. 172. Review panel.
"Sec. 173. Termination.

"Subtitle G—Other Benefits

"Sec. 174. Consideration in siting facilities.
"Sec. 175. Report.

"Subtitle H—Transportation

"Sec. 180. Transportation.

(3) adding at the end of title II the following new section:

"Sec. 224. Subseabed disposal."; and

(4) adding at the end the following new titles:

"TITLE IV—NUCLEAR WASTE NEGOTIATOR

"Sec. 401. Definition.
"Sec. 402. The Office of Nuclear Waste Negotiator.
"Sec. 403. Duties of the Negotiator.
"Sec. 404. Environmental assessment of sites.
"Sec. 405. Site characterization; licensing.

SEC. 5066. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated from the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) for activities under such Act—

(1) in fiscal year 1988, no more than $567,000,000;

(2) in fiscal year 1989, no more than $545,000,000; and

(3) in fiscal year 1990, no more than $484,000,000.

Subtitle B—Federal Onshore Oil and Gas Leasing Reform Act of 1987

SEC. 5101. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This subtitle may be cited as the "Federal Onshore Oil and Gas Leasing Reform Act of 1987".

(b) REFERENCES.—Any reference in this subtitle to the "Act of February 25, 1920", is a reference to the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (30 U.S.C. 181 and following).

SEC. 5102. OIL AND GAS LEASING SYSTEM.

(a) COMPETITIVE BIDDING.—Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1)(A) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, except in Alaska, where units shall be not more than 5,760 acres. Such units shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty at a rate of not less than 12.5 percent in amount or value of the production removed or sold from the lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the national minimum acceptable bid, without evaluation of the value of the lands proposed for lease.

Leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the national minimum acceptable bid shall be rejected. Lands for which no bids are received or for which the highest bid is less than the national minimum acceptable bid shall be offered promptly within 30 days for leasing under subsection (c) of this section and shall remain available for leasing for a period of 2 years after the competitive lease sale.

"(B) The national minimum acceptable bid shall be $2 per acre for a period of 2 years from the date of enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. Thereafter, the Secretary may establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands. Ninety days before the Secretary makes any change in the national minimum acceptable bid, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The proposal or promulgation of any regulation to establish a national minimum acceptable bid shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.".

(b) NONCOMPETITIVE LEASING.—Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows:

"(c)(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding, upon payment of a non-refundable application fee of at least $75. A lease under this subsection shall be conditioned upon the payment of a royalty at a rate of 12.5 percent in amount or value of the production removed or sold from the lease. Leases shall be issued within 60 days of the date on which the Secretary identifies the first responsible qualified applicant.

"(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the national minimum acceptable bid and (ii) for which, at the end of the period referred to in subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is cancelled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(c) RENTALS.—Section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows:

"(d) All leases issued under this section, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, shall be conditioned upon payment by the lessee of a rental of not less than $1.50 per acre per year for the first through fifth years of the lease and not less than $2 per acre per year for each year thereafter. A minimum royalty in lieu of rental of not less than the rental which otherwise would be required for that lease year shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.".

(d) NOTICE AND RECLAMATION.—(1) Section 17 of the Act of February 25, 1920 (30 U.S.C. 226), is amended by redesignating subsections (f) through (k) as subsections (i) through (n) and by adding the following new subsections (f) through (h):

"(f) At least 45 days before offering lands for lease under this section, and at least 30 days before approving applications for permits to drill under the provisions of a lease or substantially modifying the terms of any lease issued under this section, the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agencies. Such notice shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all leases already issued in the general area. The requirements of this subsection are in addition to any public notice required by other law.

"(g) The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation of surface resources. No permit to drill on an oil and gas lease issued under this Act may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary of the Interior or Secretary of Agriculture, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity the concerned Secretary shall provide such entity with adequate notifica-

tion and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such entity under this Act.

"(h) The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture.".

(2) Section 31(h) of the Act of February 25, 1920 (30 U.S.C. 188(h)), is amended by striking out "section 17(j)" and substituting "section 17(m)".

SEC. 5103. ASSIGNMENTS.

Sections 30(a) and 30(b) of the Act of February 25, 1920 (30 U.S.C. 187a, 187b), are redesignated as sections 30A and 30B, respectively, and the third sentence of section 30A, as so redesignated, is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: Provided, however, That the Secretary may, in his discretion, disapprove an assignment of any of the following, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas:

"(1) A separate zone or deposit under any lease.

"(2) A part of a legal subdivision.

"(3) Less than 640 acres outside Alaska or of less than 2,560 acres within Alaska.

Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the Secretary of a request for such approval.".

SEC. 5104. LEASE CANCELLATION.

The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows: "Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after 30 days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(m) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 5105. ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.

Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) are deleted in their entirety.

(2) The second sentence of subsection 1008(d) is deleted.

SEC. 5106. PENDING APPLICATIONS, OFFERS, AND BIDS.

(a) Notwithstanding any other provision of this subtitle and except as provided in subsection (b) of this section, all noncompetitive oil and gas lease applications and offers and competitive oil and gas bids pending on the date of enactment of this subtitle shall

be processed, and leases shall be issued under the provisions of the Act of February 25, 1920, as in effect before its amendment by this subtitle, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(b) No noncompetitive lease applications or offers pending on the date of enactment of this subtitle for lands within the Shawnee National Forest, Illinois; the Ouachita National Forest, Arkansas; Fort Chaffee, Arkansas; or Eglin Air Force Base, Florida; shall be processed until these lands are posted for competitive bidding in accordance with section 5102 of this subtitle. If any such tract does not receive a bid equal to or greater than the national minimum acceptable bid from a responsible qualified bidder then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued under the Act of February 25, 1920, as in effect before its amendment by this subtitle, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

(c) Except as provided in subsections (a) and (b) of this section, all oil and gas leasing pursuant to the Act of February 25, 1920, after the date of enactment of this subtitle shall be conducted in accordance with the provisions of this subtitle.

SEC. 5107. REGULATIONS; TEST SALE.

(a) REGULATIONS.—The Secretary shall issue final regulations to implement this subtitle within 180 days after the enactment of this subtitle. The regulations shall be effective when published in the Federal Register.

(b) TREATMENT UNDER OTHER LAW.—The proposal or promulgation of such regulations shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.

(c) TEST SALE.—The Secretary may hold one or more lease sales conducted in accordance with the amendments made by this subtitle before promulgation of regulations referred to in subsection (a). Sale procedures for such sale shall be established in the notice of sale.

SEC. 5108. ENFORCEMENT.

The Act of February 25, 1920, is amended by inserting after section 40 the following new section:

"SEC. 41. ENFORCEMENT.

"(a) VIOLATIONS.—It shall be unlawful for any person:

"(1) to organize or participate in any scheme, arrangement, plan, or agreement to circumvent or defeat the provisions of this Act or its implementing regulations, or

"(2) to seek to obtain or to obtain any money or property by means of false statements of material facts or by failing to state material facts concerning:

"(A) the value of any lease or portion thereof issued or to be issued under this Act;

"(B) the availability of any land for leasing under this Act;

"(C) the ability of any person to obtain leases under this Act; or

"(D) the provisions of this Act and its implementing regulations.

"(b) PENALTY.—Any person who knowingly violates the provisions of subsection (a) of this section shall be punished by a fine of not more than $500,000, imprisonment for not more than five years, or both.

"(c) CIVIL ACTIONS.—Whenever it shall appear that any person is engaged, or is about to engage, in any act which constitutes or will constitute a violation of subsection (a) of this section, the Attorney General may institute a civil action in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or any combination of the foregoing.

"(d) CORPORATIONS.—(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who knowingly authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

"(e) REMEDIES, FINES, AND IMPRISONMENT.—The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

"(f) STATE CIVIL ACTIONS.—(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) A State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within 30 days of filing of the action. The Attorney General of the United States shall notify a State of any civil action arising from activity conducted within that State filed by the Attorney General under this subsection within 30 days of filing of the action.

"(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in the manner determined by the court rendering judgment in such action.

"(4) If a State has commenced a civil action against a person conducting activity within the State in violation of this section, the Attorney General may join in such action but may not institute a separate action arising from the same activity under this section. If the Attorney General has commenced a civil action against a person conducting activity within a State in violation of this section, that State may join in such action but may not institute a separate action arising from the same activity under this section.

"(5) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 5109. PAYMENTS TO STATES.

Section 35 of the Act of February 25, 1920 (30 U.S.C. 191) is amended by adding the following at the end thereof: "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.".

SEC. 5110. REPORT.

The Secretary shall submit annually for 5 years after enactment of this subtitle to the Congress a report containing appropriate information to facilitate congressional monitoring of this subtitle. Such report shall include, but not be limited to—

(1) the number of acres leased, and the number of leases issued, competitively and noncompetitively;

(2) the amount of revenue received from bonus bids, filing fees, rentals, and royalties;

(3) the amount of production from competitive and noncompetitive leases; and

(4) such other data and information as will facilitate—

(A) an assessment of the onshore oil and gas leasing system, and

(B) a comparison of the system as revised by this subtitle with the system in operation prior to the enactment of this subtitle.

SEC. 5111. LAND USE STUDY.

The National Academy of Sciences and the Comptroller General of the United States shall conduct a study of the manner in which oil and gas resources are considered in the land use plans developed by the Secretary of the Interior in accordance with provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743) and the Secretary of Agriculture in accordance with the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476), as amended by the National Forest Management Act of 1976

(90 Stat. 2949), and recommend any improvements that may be necessary to ensure that—

(1) potential oil and gas resources are adequately addressed in planning documents;

(2) the social, economic, and environmental consequences of exploration and development of oil and gas resources are determined; and

(3) any stipulations to be applied to oil and gas leases are clearly identified.

SEC. 5112. LANDS NOT SUBJECT TO OIL AND GAS LEASING.

The Act of February 25, 1920, is amended by adding the following at the end thereof:

"SEC. 43. LANDS NOT SUBJECT TO OIL AND GAS LEASING.

"(a) PROHIBITION.—The Secretary shall not issue any oil and gas lease under this Act on any of the following Federal lands:

"(1) Lands recommended for wilderness allocation by the surface managing agency.

"(2) Lands within Bureau of Land Management wilderness study areas.

"(3) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area.

"(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

"(b) EXPLORATION.—In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for National Forest Lands reserved from the public domain, the Secretary of Agriculture) to issue permits for exploration for oil and gas by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment.".

SEC. 5113. SHORT TITLE.

The Act of February 25, 1920, is amended by inserting after section 43 the following new section:

"SEC. 44. SHORT TITLE.

"This Act may be cited as the 'Mineral Leasing Act'.".

Subtitle C—Land and Water Conservation Fund and Tongass Timber Supply Fund

SEC. 5201. LAND AND WATER CONSERVATION FUND ACT AMENDMENTS.

(a) ADMISSION FEES.—Section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a)) is amended as follows:

(1) Paragraph (1) is amended by striking out "$10" and inserting in lieu thereof "$25" in the first sentence.

(2) Paragraph (1) is further amended by striking out "(1)" and inserting in lieu thereof "(1)(A)" and adding the following new subparagraph at the end thereof:

"(B) For admission into a specific designated unit of the National Park System, or into several specific units located in a particular geographic area, the Secretary is authorized to make available an annual admission permit for a reasonable fee. The fee shall not exceed $15 regardless of how many units of the park system are covered. The permit shall convey the privileges of, and shall be subject to the same terms and conditions as, the Golden Eagle Passport, except that it shall be valid only for admission into the specific unit or units of the National Park System indicated at the time of purchase.".

(3) Paragraph (2) is amended by adding the following sentences at the end thereof: "The fee for a single-visit permit at any designated area applicable to those persons entering by private, noncommercial vehicle shall be no more than $5 per vehicle. The single-visit permit shall admit the permittee and all persons accompanying him in a single vehicle. The fee for a single-visit permit at any designated area applicable to those persons entering by any means other than a private noncommercial vehicle shall be no more than $3 per person. Except as otherwise provided in this subsection, the maximum fee amounts set forth in this paragraph shall apply to all designated areas.".

(4) Paragraph (3) is amended by adding the following new sentence at the end thereof: "Notwithstanding any other provision of this Act, no admission fee may be charged at any unit of the National Park System which provides significant outdoor recreation opportunities in an urban environment and to which access is publicly available at multiple locations.".

(5) Add the following new paragraphs:

"(6)(A) No later than 60 days after the date of enactment of this paragraph, the Secretary of the Interior shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report on the entrance fees proposed to be charged at units of the National Park System. The report shall include a list of units of the National Park System and the entrance fee proposed to be charged at each unit. The Secretary of the Interior shall include in the report an explanation of the guidelines used in applying the criteria in subsection (d).

"(B) Following submittal of the report to the respective committees, any proposed changes to matters covered in the report, including the addition or deletion of park units or the increase or decrease of fee levels at park units shall not take effect until 60 days after notice of the proposed change has been submitted to the committees.

"(7) No admission fee may be charged at any unit of the National Park System for admission of any person 16 years of age or less.

"(8) No admission fee may be charged at any unit of the National Park System for admission of organized school groups or

outings conducted for educational purposes by schools or other bona fide educational institutions.

"(9) No admission fee may be charged at the following units of the National Park System: U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the National Park System within the District of Columbia, Arlington House—Robert E. Lee National Memorial, San Juan National Historic Site, and Canaveral National Seashore.

"(10) For each unit of the National Park System where an admission fee is collected, the Director shall annually designate at least one day during periods of high visitation as a 'Fee-Free Day' when no admission fee shall be charged.

"(11) In the case of the following parks, the fee for a single-visit permit applicable to those persons entering by private, noncommercial vehicle (the permittee and all persons accompanying him in a single vehicle) shall be no more than $10 per vehicle and the fee for a single-visit permit applicable to persons entering by any means other than a private noncommercial vehicle shall be no more than $5 per person: Yellowstone National Park and Grand Teton National Park and after the end of fiscal year 1990, Grand Canyon National Park. In the case of Yellowstone and Grand Teton, a single-visit fee collected at one unit shall also admit the vehicle or person who paid such fee for a single-visit to the other unit.

"(12) Notwithstanding section 203 of the Alaska National Interest Lands Conservation Act, the Secretary may charge an admission fee under this section at Denali National Park and Preserve in Alaska."

(b) VISITOR RESERVATION SERVICES.—Section 4(f) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(f)) is amended to read as follows:

"(f) The head of any Federal agency, under such terms and conditions as he deems appropriate, may contract with any public or private entity to provide visitor reservation services. Any such contract may provide that the contractor shall be permitted to deduct a commission to be fixed by the agency head from the amount charged the public for providing such services and to remit the net proceeds therefrom to the contracting agency.".

(c) SPECIAL PROVISIONS.—Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a) is amended by adding the following new subsections at the end thereof:

"(i)(1) Except in the case of fees collected by the United States Fish and Wildlife Service or the Tennessee Valley Authority, all receipts from fees collected pursuant to this section by any Federal agency (or by any public or private entity under contract with a Federal agency) shall be covered into a special account for that agency established in the Treasury of the United States. Fees collected by the Secretary of Agriculture pursuant to this subsection shall continue to be available for the purposes of distribution to States and counties in accordance with applicable law.

"(2) Amounts covered into the special account for each agency during each fiscal year shall, after the end of such fiscal year, be available for appropriation solely for the purposes and in the manner provided in this subsection. No funds shall be transferred

from fee receipts made available under this Act to each unit of the national park system: Provided, however, That in making appropriations, funds derived from such fees may be used for any purpose authorized therein. Funds credited to the special account shall remain available until expended.

"(3) For agencies other than the National Park Service, such funds shall be made available for resource protection, research, interpretation, and maintenance activities related to resource protection in areas managed by that agency at which outdoor recreation is available. To the extent feasible, such funds should be used for purposes (as provided for in this paragraph) which are directly related to the activities which generated the funds, including but not limited to water-based recreational activities and camping.

"(4) Amounts covered into the special account for the National Park Service shall be allocated among park system units in accordance with subsection (j) for obligation or expenditure by the Director of the National Park Service for the following purposes:

"(A) In the case of receipts from the collection of admission fees: for resource protection, research, and interpretation at units of the National Park System.

"(B) In the case of receipts from the collection of user fees: for resource protection, research, interpretation, and maintenance activities related to resource protection at units of the National Park System.

"(j)(1) 10 percent of the funds made available to the Director of the National Park Service under subsection (i) in each fiscal year shall be allocated among units of the National Park System on the basis of need in a manner to be determined by the Director.

"(2) 40 percent of the funds made available to the Director of the National Park Service under subsection (i) in each fiscal year shall be allocated among units of the National Park System in accordance with paragraph (3) of this subsection and 50 percent shall be allocated in accordance with paragraph (4) of this subsection.

"(3) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the operating expenses at that unit during the prior fiscal year by the total operating expenses at all units during the prior fiscal year.

"(4) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the user fees and admission fees collected under this section at that unit during the prior fiscal year by the total of user fees and admission fees collected under this section at all units during the prior fiscal year.

"(5) Amounts allocated under this subsection to any unit for any fiscal year and not expended in that fiscal year shall remain available for expenditure at that unit until expended.

"(k) When authorized by the head of the collecting agency, volunteers at designated areas may sell permits and collect fees authorized or established pursuant to this section. The head of such agency shall ensure that such volunteers have adequate training regarding—

"(1) the sale of permits and the collection of fees,

"(2) the purposes and resources of the areas in which they are assigned, and

"(3) the provision of assistance and information to visitors to the designated area.

The Secretary shall require a surety bond for any such volunteer performing services under this subsection. Funds available to the collecting agency may be used to cover the cost of any such surety bond. The head of the collecting agency may enter into arrangements with qualified public or private entities pursuant to which such entities may sell (without cost to the United States) annual admission permits (including Golden Eagle Passports) at any appropriate location. Such arrangements shall require each such entity to reimburse the United States for the full amount to be received from the sale of such permits at or before the agency delivers the permits to such entity for sale.

"(l)(1) Where the National Park Service provides transportation to view all or a portion of any unit of the National Park System, the Director may impose a charge for such service in lieu of an admission fee under this section. The charge imposed under this paragraph shall not exceed the maximum admission fee under subsection (a).

"(2) Notwithstanding any other provision of law, half of the charges imposed under paragraph (1) shall be retained by the unit of the National Park System at which the service was provided. The remainder shall be covered into the special account referred to in subsection (i) in the same manner as receipts from fees collected pursuant to this section. Fifty percent of the amount retained shall be expended only for maintenance of transportation systems at the unit where the charge was imposed. The remaining 50 percent of the retained amount shall be expended only for activities related to resource protection at such units.

"(m) Where the primary public access to a unit of the National Park System is provided by a concessioner, the Secretary may charge an admission fee at such units only to the extent that the total of the fee charged by the concessioner for access to the unit and the admission fee does not exceed the maximum amount of the admission fee which could otherwise be imposed under subsection (a).".

(d) REPEALS.—(1) Title I of Public Law 96-514 is amended by striking out the following provisions which appear under the heading "Land and Water Conservation Fund": "Notwithstanding the provisions of Public Law 90-401, revenues from recreation fee collections by Federal agencies shall hereafter be paid into the Land and Water Conservation Fund, to be available for appropriation for any or all purposes authorized by the Land and Water Conservation Fund Act of 1965, as amended, without regard to the source of such revenues.".

(2) Section 402 of the Act of October 12, 1979 (93 Stat. 664), is hereby repealed.

(3) The seventh paragraph of title I of the Energy and Water Development Appropriation Act, 1982, entitled "Special Recreation Use Fees" is hereby repealed.

(e) STUDY.—(1) The Secretary of the Interior shall assess the extent to which traffic congestion and overcrowding occurs at certain park

system units during times of seasonally high usage and shall conduct a study of the following—

(A) the feasibility of reducing vehicular traffic within national park system units through fee reductions for visitors traveling by bus and through other means which could shift visitation from automobiles to buses; and

(B) the feasibility of encouraging more even seasonal distribution of visitation.

(2) The study shall include a pilot project to be carried out in Yosemite National Park. For purposes of such pilot project, the Secretary may reduce the fees for admission of various classes or categories of visitors to Yosemite National Park and may reduce the admission fees imposed at the park during seasons with low visitation. A report containing the results of the study shall be transmitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate within 3 years after the enactment of this Act.

(f) EXTENSION OF LAND AND WATER CONSERVATION FUND.—(1) Section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601 and following) is amended as follows:

(A) In the matter preceding subsection (a) strike "1989" and substitute "2015".

(B) In subsection (c)(1) strike "1989" and substitute "2015".

(2) The last sentence of section 3 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601 and following) is amended to read as follows: "Moneys made available for obligation or expenditure from the fund or from the special account established under section 4(i)(1) may be obligated or expended only as provided in this Act.".

(g) RELATIONSHIP TO FISCAL YEAR 1988 APPROPRIATIONS.—For purposes of legislation providing appropriations for the fiscal year 1988 to the Department of the Interior, the provisions of this section shall be treated as "permanent statutory language" establishing entrance fees for the National Park Service.

SEC. 5202. TONGASS TIMBER SUPPLY FUND

From the period beginning on October 1, 1987, and extending until September 30, 1989, the provisions of section 705(a) of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 539(d)) shall not be effective. In lieu thereof, the following provision shall apply:

"There is hereby authorized to be appropriated the sum of at least $40,000,000 annually (or such sums as the Secretary of Agriculture determines necessary) to maintain the timber supply from the Tongass National Forest to dependent industry at a rate of 4,500,000,000 foot board measure per decade.".

Subtitle D—Reclamation

SEC. 5301. SALE OF BUREAU OF RECLAMATION LOANS.

(a) SALE.—The Secretary of the Interior (hereinafter in this section referred to as the "Secretary"), under such terms as the Secretary

shall prescribe, shall sell or otherwise dispose of loans made pursuant to the Distribution System Loans Act (43 U.S.C. 421a-421d), the Small Reclamation Projects Act (43 U.S.C. 422a-422l), and the Rehabilitation and Betterment Act (43 U.S.C. 504-505) in such amounts as to realize net proceeds to the Federal Government of not less than $130,000,000 in the fiscal year ending September 30, 1988. In the conduct of such sales, the Secretary shall take such actions as he deems appropriate to accommodate, effectuate, and otherwise protect the rights and obligations of the United States and the borrowers under the contracts executed to provide for repayment of such loans.

(b) SAVINGS PROVISIONS.—Nothing in this section, including the prepayment or other disposition of any loan or loans, shall—

(1) except to the extent that prepayment may have been authorized heretofore, relieve the borrower from the application of the provisions of Federal Reclamation law (Act of June 17, 1902, and Acts amendatory thereof or supplementary thereto, including the Reclamation Reform Act of 1982), including acreage limitations, to the extent such provisions would apply absent such prepayment, or

(2) authorize the transfer of title to any federally owned facilities funded by the loans specified in subsection (a) of this section without a specific Act of Congress.

(c) FEES AND EXPENSES OF PROGRAM.—Proceeds from the conduct of the program authorized by this section shall be first used to pay the fees and expenses of such program and the net proceeds shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) TERMINATION.—The authority granted by this section to sell or otherwise dispose of loans shall terminate on December 31, 1988.

SEC. 5302. RECLAMATION REFORM ACT AMENDMENTS.

(a) AUDIT.—Section 224 of the Reclamation Reform Act of 1982 (Public Law 97-293) is amended by adding the following new subsections after subsection (f):

"(g) In addition to any other audit or compliance activities which may otherwise be undertaken, the Secretary of the Interior, or his designee, shall conduct a thorough audit of the compliance with the reclamation law of the United States, specifically including this Act, by legal entities and individuals subject to such law. At a minimum, the Secretary shall complete audits of those legal entities and individuals whose landholdings or operations exceed 960 acres within 3 years. The Secretary shall submit an annual written report to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs. Such report shall summarize the legal entities and individuals audited, the results of such audits, and the actions taken by the Secretary to correct any instances of noncompliance with the reclamation law.

"(h) The provisions of section 205(c) are and have been applicable to all recordable contracts executed prior to October 12, 1982, and any decision, rule, or regulation promulgated by the Department of the Interior to the contrary is hereby revoked: Provided, That notwithstanding the provisions of subsection (i), the Secretary shall not seek reimbursement for any amounts due under this subsection or

section 205(c) which was due prior to the date of enactment of this subsection.

"(i) When the Secretary finds that any individual or legal entity subject to reclamation law, including this Act, has not paid the required amount for irrigation water delivered to a landholding pursuant to reclamation law, including this Act, he shall collect the amount of any underpayment with interest accruing from the date the required payment was due until paid. The interest rate shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing marketable issues sold by the Treasury during the period of underpayment.".

(b) REVOCABLE TRUSTS.—Section 214 of the Reclamation Reform Act of 1982 (Public Law 97-293) is amended by inserting "(a)" after "214" and by adding the following new subsection at the end thereof:

"(b) Lands placed in a revocable trust shall be attributable to the grantor if—

"(1) the trust is revocable at the discretion of the grantor and revocation results in the title to such lands reverting either directly or indirectly to the grantor; or

"(2) the trust is revoked or terminated by its terms upon the expiration of a specified period of time and the revocation or termination results in the title to such lands reverting either directly or indirectly to the grantor.".

Subtitle E—Panama Canal

SEC. 5401. REFERENCE TO THE PANAMA CANAL ACT OF 1979.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Panama Canal Act of 1979 (22 U.S.C. 3601 and following).

PART 1—PANAMA CANAL REAUTHORIZATION

SEC. 5411. OPERATING EXPENSES.

There is authorized to be appropriated from the Panama Canal Commission Fund to the Panama Canal Commission (hereafter in this part referred to as the "Commission") for the fiscal year beginning October 1, 1987, not to exceed $467,050,000, for necessary expenses of the Commission incurred under the Panama Canal Act of 1979 (22 U.S.C. 3601 and following), including expenses for—

(1) the hire of passenger motor vehicles and aircraft;

(2) the purchase of passenger motor vehicles as may be necessary for fiscal year 1988, the number and price of which shall not exceed the amount provided in appropriation Acts; except that large heavy-duty passenger sedans used to transport Commission employees across the Isthmus of Panama may be purchased for fiscal year 1988 without regard to price limitations set forth in applicable regulations of any department or agency of the United States;

(3) official receptions and representation expenses, except that not more than $43,000 may be made available for such expenses, of which (A) not more than $10,000 may be made available for such expenses of the Supervisory Board of the Commission, (B) not more than $5,000 may be made available for such expenses of the Secretary of the Commission, and (C) not more than $28,000 may be made available for such expenses of the Administrator of the Commission;

(4) the procurement of expert and consultant services as provided in section 3109 of title 5, United States Code;

(5) a residence for the Administrator of the Commission;

(6) uniforms, or allowances therefor, as authorized by section 5901 and 5902 of title 5, United States Code;

(7) disbursements by the Administrator of the Commission for employee recreation and community projects; and

(8) the operation of guide services.

SEC. 5412. CAPITAL OUTLAY.

Of any funds appropriated pursuant to section 5411, not more than $37,000,000 (which is authorized to remain available until expended) may be made available for the acquisition, construction, replacement and improvements of facilities, structures, and equipment required by the Commission.

SEC. 5413. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.

In addition to the amount authorized to be appropriated by section 5411, there are authorized to be appropriated to the Commission for the fiscal year 1988 such amounts as may be necessary for—

(1) increases in salary, pay, retirement, and other employee benefits provided by law;

(2) covering payments to Panama under paragraph 4(a) of Article XIII of the Panama Canal Treaty of 1977, as provided by section 1341(a) of the Panama Canal Act of 1979 (22 U.S.C. 3751(a)); and

(3) increased costs for fuel.

SEC. 5414. INSURANCE.

Section 1419 (22 U.S.C. 3779) is amended by inserting "or other unpredictable events" after "marine accidents".

SEC. 5415. AUTHORITY TO LEASE OFFICE SPACE.

Notwithstanding section 210 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490), the Commission is authorized to negotiate directly and enter into contracts for the lease of, and for improvements to, real property in the United States for use by the Commission as office space, on such terms as the Commission considers to be in the interest of the United States, and to make direct payments therefor.

SEC. 5416. COMPENSATION OF BOARD MEMBERS.

Section 1102(b) (22 U.S.C. 3612(b)) is amended by inserting before the period at the end thereof the following: "or, as authorized by the Chairman of the Board, while an official Panama Canal Commission business".

SEC. 5417. SETTLEMENT OF CLAIMS.

(a) SETTLEMENT OF CLAIMS.—Section 1401(b) (22 U.S.C. 3761(b)) is amended to read as follows:

"(b) The Commission may pay not more than $50,000 on any claim described in subsection (a).".

(b) INJURIES TO VESSELS WITHOUT PILOTS.—Section 1411(b)(1) (22 U.S.C. 3771(b)(1)) is amended by striking out "adjust and pay" and all that follows through "$50,000" and inserting in lieu thereof "pay not more than $50,000 on the claim".

SEC. 5418. REPORT TO CONGRESS.

Out of the funds authorized to be appropriated by this part, the Commission shall prepare and submit to the Congress a report on—

(1) the condition of the Panama Canal and potential adverse effects on United States shipping and commerce;

(2) the effect on canal operations of the military forces under General Noriega; and

(3) the Commission's evaluation of the effect on canal operations if the Panamanian Government continues to withhold its consent to major factors in the United States Senate's ratification of the Panama Canal Treaties.

PART 2—PANAMA CANAL REVOLVING FUND

SEC. 5421. SHORT TITLE.

This part may be referred to as the "Panama Canal Revolving Fund Act".

SEC. 5422. ESTABLISHMENT OF REVOLVING FUND.

(a) ESTABLISHMENT.—Section 1302 (22 U.S.C. 3712) is amended by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"SEC. 1302. (a)(1) There is established in the Treasury of the United States a revolving fund to be known as the 'Panama Canal Revolving Fund'. The Panama Canal Revolving Fund shall, subject to subsection (c), be available to the Commission to carry out the purposes, functions, and powers authorized by this Act, including for—

"(A) the hire of passenger motor vehicles and aircraft;

"(B) uniforms or allowances therefor, as authorized by sections 5901 and 5902 of title 5, United States Code;

"(C) official receptions and representation expenses of the Board, the Secretary of the Commission, and the Administrator;

"(D) the operation of guide services;

"(E) a residence for the Administrator;

"(F) disbursements by the Administrator for employee and community projects; and

"(G) the procurement of expert and consultant services as provided in section 3109 of title 5, United States Code.

"(2) On the effective date of the Panama Canal Revolving Fund Act—

"(A) the Panama Canal Commission Fund shall be terminated and the unappropriated balance, including undeposited receipts as of the close of business on the day before the effective

date of the Panama Canal Revolving Fund Act, shall be transferred to the Panama Canal Revolving Fund;

"(B) the unexpended balance of appropriations to the Commission, as of the close of business on the day before the effective date of the Panama Canal Revolving Fund Act, shall be transferred to the Panama Canal Revolving Fund, and such amounts, including amounts appropriated for capital expenditures, shall remain available until expended;

"(C) the assets and liabilities recorded before such effective date under the 'Panama Canal Commission Fund' shall be recorded under the Panama Canal Revolving Fund; and

"(D) the Panama Canal Emergency Fund shall be terminated and the remaining balance shall be transferred to the Panama Canal Revolving Fund.

"(b) Upon completion of the transfers of funds under subsection (a)—

"(1) amounts attributable to interest on the investment of the United States in the Panama Canal which accrued before January 1, 1986, shall be transferred from the Panama Canal Revolving Fund to the general fund of the Treasury; and

"(2) such amounts as were appropriated to the Commission in the fiscal year which ended September 30, 1980, and for which the Commission has not reimbursed the general fund of the Treasury, shall be transferred to the general fund of the Treasury.

"(c)(1) There shall be deposited in the Panama Canal Revolving Fund, on a continuing basis, toll receipts and all other receipts of the Commission. Except as provided in section 1303 and subject to paragraph (2), no funds may be obligated or expended by the Commission in any fiscal year unless such obligation or expenditure has been specifically authorized by law.

"(2) No funds may be obligated or expended by the Commission in any fiscal year for administrative expenses except to the extent or in such amounts as are provided in appropriations Acts.

"(3) No funds may be authorized for the use of the Commission, or obligated or expended by the Commission in any fiscal year in excess of—

"(A) the amount of revenues deposited in the Panama Canal Revolving Fund during such fiscal year, plus

"(B) the amount of revenues deposited in the Panama Canal Revolving Fund before such fiscal year and remaining unexpended at the beginning of such fiscal year.

Not later than 30 days after the end of each fiscal year, the Secretary of the Treasury shall report to the Congress the amount of revenues deposited in the Panama Canal Revolving Fund during such fiscal year.

"(d) With the approval of the Secretary of the Treasury, the Commission may deposit amounts in the Panama Canal Revolving Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Commission and the Secretary may agree.

"(e) The Committee on Appropriations of each House of Congress shall review the annual budget of the Commission, including operations and capital expenditures.".

(b) CONFORMING AMENDMENTS.—(1) The section heading for section 1302 is amended to read as follows:

"PANAMA CANAL REVOLVING FUND".

(2) The item relating to section 1302 in the table of contents of the Panama Canal Act of 1979 is amended to read as follows:

"1302. Panama Canal Revolving Fund.".

SEC. 5423. EMERGENCY AUTHORITY.

(a) GRANT OF AUTHORITY.—Section 1303 (22 U.S.C. 3713) is amended to read as follows:

"SEC. 1303. If authorizing legislation described in section 1302(c)(1) has not been enacted for a fiscal year, then the Commission may withdraw funds from the Panama Canal Revolving Fund in order to defray emergency expenses and to ensure the continuous, efficient, and safe operation of the Panama Canal, including expenses for capital projects. The authority of this section may not be used for administrative expenses. The authority of this section may be exercised only until authorizing legislation described in section 1302(c)(1) is enacted, or for a period of 24 months after the end of the fiscal year for which such authorizing legislation was last enacted, whichever occurs first. Within 60 days after the end of any calendar quarter in which expenditures are made under this section, the Commission shall report such expenditures to the appropriate committees of the Congress.".

(b) CONFORMING AMENDMENTS.—(1) The section heading for section 1303 is amended by striking out "FUND" and inserting in lieu thereof "AUTHORITY".

(2) The item relating to section 1303 in the table of contents of the Panama Canal Act of 1979 is amended by striking out "fund" and inserting in lieu thereof "authority".

SEC. 5424. BORROWING AUTHORITY.

(a) GRANT OF AUTHORITY.—Subchapter I of chapter 3 of title I (22 U.S.C. 3711 and following) is amended by adding at the end thereof the following new section:

"BORROWING AUTHORITY

"SEC. 1304. (a) The Panama Canal Commission may borrow from the Treasury, for any of the purposes of the Commission, not more than $100,000,000 outstanding at any time. For this purpose, the Commission may issue to the Secretary of the Treasury its notes or other obligations—

"(1) which shall have maturities (of not later than December 31, 1999) agreed upon by the Commission and the Secretary of the Treasury, and

"(2) which may be redeemable at the option of the Commission before maturity.

"(b) Amounts borrowed under this section shall not be available for payments to Panama under Article XIII of the Panama Canal Treaty of 1977.

"(c) Amounts borrowed under this section shall increase the investment of the United States in the Panama Canal, and repayment of such amounts shall decrease such investment.

"(d) The Commission shall report to the Congress and to the Office of Management and Budget on each exercise of borrowing authority under this section.".

(b) CONFORMING AMENDMENT.—The table of contents of the Panama Canal Act of 1979 is amended by inserting after the item relating to section 1303 the following:

"1304. Borrowing authority.".

SEC. 5425. CALCULATION OF INTEREST.

(a) CALCULATION OF INTEREST.—Section 1603 (22 U.S.C. 3793) is amended—

(1) in subsection (b)(1)(A), by striking out "appropriations to the Commission made on or after the effective date of this Act" and inserting in lieu thereof "the Panama Canal Revolving Fund,";

(2) in subsection (b)(2)(A), by striking out "covered into the Panama Canal Commission Fund pursuant to section 1302 of this Act" and inserting in lieu thereof "deposited in the Panama Canal Revolving Fund"; and

(3) by adding at the end thereof the following new subsection:

"(d) The Panama Canal Commission shall pay to the Treasury of the United States interest on the investment of the United States, as determined under this section. Such interest shall be deposited in the general fund of the Treasury.".

SEC. 5426. PAYMENTS TO THE REPUBLIC OF PANAMA.

The second sentence of section 1341(e) (22 U.S.C. 3751(e)) is amended—

(1) by striking out "and" before "(6)"; and

(2) by inserting before the period ", and (7) amounts programmed to meet working capital requirements".

SEC. 5427. BASES OF TOLLS.

Section 1602(b) (22 U.S.C 3792(b)) is amended by inserting "working capital," after "depreciation,".

SEC. 5428. TECHNICAL AND CONFORMING AMENDMENTS.

(a) APPLIANCES FOR EMPLOYEES INJURED BEFORE SEPTEMBER 7, 1916.—Section 1246 (22 U.S.C. 3683) is amended by striking out "appropriated" and inserting in lieu thereof "available".

(b) DISASTER RELIEF.—Section 1343 (22 U.S.C. 3753) is amended by striking out "available funds appropriated" and inserting in lieu thereof "funds available".

(c) CONGRESSIONAL RESTRAINTS ON PROPERTY TRANSFERS AND TAX EXPENDITURES.—Section 1344(b)(4) (22 U.S.C. 3754(b)(4)) is amended—

(1) by striking out "appropriated to or" and inserting in lieu thereof "available"; and

(2) by striking out "Panama Canal Commission Fund" and inserting in lieu thereof "Panama Canal Revolving Fund".

(d) CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—Section 8348(i)(2) of title 5, United States Code, is amended by striking out "The Secretary of the Treasury shall pay to the Fund from appropriations" and inserting in lieu thereof "The Panama Canal Commission shall pay to the Fund from funds available to it".

(e) CANAL ZONE GOVERNMENT FUNDS.—Section 1301 (22 U.S.C. 3711) is amended—

(1) by amending the second sentence to read as follows: "The Commission may, to the extent of funds available to it, pay claims or make payments chargeable to such accounts, upon proper audit of such claims or payments."; and

(2) by striking out the third sentence.

SEC. 5429. EFFECTIVE DATE.

This part and the amendments made by this part take effect on January 1, 1988.

Subtitle F—Abandoned Mine Funds in Wyoming

SEC. 5501. ALLOCATION OF ABANDONED MINE RECLAMATION FUNDS IN WYOMING.

Notwithstanding any other provision of law, the State of Wyoming may, subject to a plan approved by the Governor, expend not more than $2,000,000 from its allocation of fiscal year 1987 appropriated funds under section 402(g) of Public Law 95-87 for direct assistance to citizens evacuated from their homes in the Rawhide and Horizon Subdivisions in Campbell County, Wyoming, due to hazards from methane and hydrogen sulfide gases.

Subtitle G—Nuclear Regulatory Commission User Fees

SEC. 5601. USER FEES.

Section 7601(b)(1)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272; 100 Stat. 147) is amended by inserting "; except that for fiscal years 1988 and 1989, such percentage shall be increased an additional 6 percent of such costs plus all other assessments made by the Nuclear Regulatory Commission pursuant to House Joint Resolution 395, 100th Congress, 1st Session, as enacted; but in no event shall such percentage be less than a total of 45 percent of such costs in each such fiscal year" after "with respect to such fiscal year".

TITLE VI—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS

SEC. 6001. PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an alternative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date

of the annuity payable to such employee or Member occurs after January 3, 1988, and before October 1, 1989.

(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

(1) 60 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

(2) The remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date described in paragraph (1).

An amount payable in accordance with paragraph (2) shall be payable with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations under which this section shall not apply—

(1) in the case of any individual who is separated from Government service involuntarily, other than for cause on charges of misconduct or delinquency; and

(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall affect the commencement date, the amount, or any other aspect of any annuity benefits payable under section 8343a or section 8420a of title 5, United States Code.

(e) DEFINITIONS.—For purposes of this section, the terms "lump-sum credit", "employee", and "Member" each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

SEC. 6002. CONTRIBUTIONS BY THE UNITED STATES POSTAL SERVICE TO THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND.

(a) ESTABLISHMENT OF POSTAL SERVICE ESCROW FUND.—There is established as a separate account in the United States Treasury, the "Postal Service Escrow Fund." Such Fund shall—

(1) have such amounts described under subsection (b)(2) deposited no later than October 31, 1988;

(2) not be available for expenditures of any amounts therein during the existence of such Fund; and

(3) cease to exist on October 1, 1989, and on such date all amounts deposited in such Fund under subsection (b)(2) shall be deposited in the Postal Service Fund established under section 2003 of title 39, United States Code.

(b) DEPOSIT OF CERTAIN SAVINGS IN CERTAIN FUNDS.—

(1) FISCAL YEAR 1988.—From all funds available to the United States Postal Service in fiscal year 1988, the Postal Service shall deposit into the Civil Service Retirement and Disability Fund established under section 8348 of title 5, United States Code, an amount of $350,000,000 in fiscal year 1988, in addition to any amount deposited pursuant to subsection (h) of such section.

(2) FISCAL YEAR 1989.—From all funds available to the United States Postal Service in fiscal year 1989, the Postal Serv-

ice shall deposit into the Postal Service Escrow Fund an amount of $465,000,000 no later than October 31, 1988.

(c) CAPITAL LIMITATIONS FOR FISCAL YEARS 1988 AND 1989.—

(1) The United States Postal Service may not make any commitment or obligation to expend any monies deposited in the Postal Service Fund established under section 2003 of title 39, United States Code, for the capital investment program—

(A) in excess of $625,000,000 in fiscal year 1988; and

(B) in excess of $1,995,000,000 in fiscal year 1989.

(2) CAPITAL INVESTMENT PROGRAMS.—For the purposes of paragraph (1) the term "capital investment program" shall include all investments in long-term assets and capital investment expenditures (including direct and indirect costs associated with such investments and expenditures, such as obligations through contracts).

SEC. 6003. CONTRIBUTIONS BY THE UNITED STATES POSTAL SERVICE TO THE EMPLOYEES HEALTH BENEFITS FUND.

(a) CONTRIBUTIONS FOR CERTAIN ANNUITANTS OF THE UNITED STATES POSTAL SERVICE.—As partial payment to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, for benefits of certain annuitants and survivor annuitants (no portion of the cost of which was paid by the Postal Service before the date of enactment of this section) the Postal Service shall pay into the Employee Health Benefits Fund $160,000,000 in fiscal year 1988, and $270,000,000 in fiscal year 1989 in addition to any amount deposited into such Fund pursuant to section 8906 of such title 5 in each such fiscal year.

(b) PAYMENT LIMITATIONS IN FISCAL YEARS 1988 AND 1989.—The partial payment required by subsection (a) of this section shall—

(1) be from all funds available to the United States Postal Service in each such fiscal year;

(2) be from funds representing savings to the United States Postal Service resulting from savings from the operating budget of the United States Postal Service in each such fiscal year; and

(3) be paid into such Fund in each such fiscal year, without—

(A) increasing borrowing under section 2005 of title 39, United States Code;

(B) using any budgetary resources other than budgetary resources derived from the operating budget of the United States Postal Service; or

(C) increasing postal rates under chapter 36 of title 39, United States Code,

for the purposes of financing such payment.

(c) IMPLEMENTATION PLANS, PROGRESS REPORTS, AND COMPLIANCE FOR FISCAL YEARS 1988 AND 1989.—

(1) IMPLEMENTATION.—No later than March 1, 1988 for fiscal year 1988, and October 1, 1988 for fiscal year 1989, the United States Postal Service shall—

(A) formulate an implementation plan specifically enumerating the methods by which the Postal Service shall make the payments required under subsection (b) and fulfill the conditions required under paragraphs (1), (2), and (3) of such subsection; and

(B) submit such plan to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives.

(2) INTERIM REPORT.—No later than July 15, 1988 for fiscal year 1988, and March 1, 1989 for fiscal year 1989, the United States Postal Service shall submit an interim report to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives on the status of meeting the guidelines and goals of the plans submitted under paragraph (1)(B), and any adjustments necessary to meet the requirements under the provisions of subsection (b) of this section for each such fiscal year.

(3) PRELIMINARY AUDIT AND REPORT BY THE GENERAL ACCOUNTING OFFICE.—No later than September 1, 1988 for fiscal year 1988, and September 1, 1989 for fiscal year 1989, the General Accounting Office shall—

(A) conduct an audit of the plans and adjustments to the plans submitted by the United States Postal Service under paragraphs (1) and (2) of this subsection and determine the extent of compliance of the Postal Service with such plans and the requirements of subsection (b) of this section; and

(B) submit a report of such audit and determinations to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives.

(4) DETERMINATION OF COMPLIANCE.—

On October 31, 1988 for fiscal year 1988, and on October 31, 1989 for fiscal year 1989, the General Accounting Office shall—

(A) make a final audit and determination of whether the United States Postal Service is in compliance with the requirements of subsection (b) of this section;

(B) submit a final report for each such fiscal year on such compliance to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives; and

(C) include in each final report submitted under subparagraph (B), such recommendations (if applicable) for any actions to enforce compliance with the provisions of subsection (b) of this section.

(5) COMPLIANCE IN FISCAL YEARS 1988 AND 1989.—Based on the determination of compliance required by subsection (c)(4) of this section for fiscal years 1988 and 1989, the Congress shall (after receiving the recommendation of the General Accounting Office under paragraph (4)(C)) determine appropriate action, if necessary, to enforce compliance with any payment limitation under subsection (b) of this section.

SEC. 6004. TECHNICAL CLARIFICATION.

For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987, the amendments made by this title shall be considered an exception under subsection (b) of such section.

TITLE VII—VETERANS' PROGRAMS

SEC. 7001. SALES OF VENDEE LOANS WITH OR WITHOUT RECOURSE.

Section 1816(d) of title 38, United States Code, is amended—

(1) by redesignating paragraph (3) as subparagraph (C);

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

"(3)(A) Before October 1, 1989, notes evidencing such loans may be sold with or without recourse as determined by the Administrator, with respect to specific proposed sales of such notes, to be in the best interest of the effective functioning of the loan guaranty program under this chapter, taking into consideration the comparative cost-effectiveness of each type of sale. In comparing the cost-effectiveness of conducting a proposed sale of such notes with recourse or without recourse, the Administrator shall, based on available estimates regarding likely market conditions and other pertinent factors as of the time of the sale, determine and consider—

"(i) the average amount by which the selling price for such notes sold with recourse would exceed the selling price for such notes if sold without recourse; and

"(ii) the total cost of selling such notes with recourse, including—

"(I) any estimated discount or premium;

"(II) the projected cost, based on Veterans' Administration experience with the sale of notes evidencing vendee loans with recourse and the quality of the loans evidenced by the notes to be sold, of repurchasing defaulted notes;

"(III) the total servicing cost with respect to repurchased notes, including the costs of taxes and insurance, collecting monthly payments, servicing delinquent accounts, and terminating insoluble loans;

"(IV) the costs of managing and disposing of properties acquired as the result of defaults on such notes;

"(V) the loss or gain on resale of such properties; and

"(VI) any other cost determined appropriate by the Administrator.

"(B) Not later than 60 days after making any sale described in subparagraph (A) of this paragraph occurring before October 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report describing—

"(i) the application of the provisions of such subparagraph, and each of the determinations required thereunder, in the case of such sale;

"(ii) the results of the sale in comparison to the anticipated results; and

"(iii) actions taken by the Administrator to facilitate the marketing of the notes involved."; and

(3) in subparagraph (C), as redesignated by clause (1) of this section—

(A) by striking out "The Administrator may sell any note securing" and inserting in lieu thereof "Beginning on October 1, 1989, the Administrator may sell any note evidencing"; and

(B) by redesignating clauses (A) and (B) as clauses (i) and (ii), respectively.

SEC. 7002. LOAN FEE EXTENSION.

Section 1829(c) of title 38, United States Code, is amended by striking out "1987" and inserting in lieu thereof "1989".

SEC. 7003. CASH SALES OF PROPERTIES ACQUIRED THROUGH FORECLOSURES.

(a) IN GENERAL.—Section 1816(d)(1) of title 38, United States Code, is amended by striking out "not more than 75 percent, nor less than 60 percent," in the first sentence and inserting in lieu thereof "not more than 65 percent, nor less than 50 percent,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of October 1, 1987.

SEC. 7004. STATUTORY CONSTRUCTION.

(a) STATUTORY CONSTRUCTION FOR PURPOSES OF THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL REAFFIRMATION ACT OF 1987.—For the purposes of subsections (a) and (b) of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119), the amendments made by section 7003 achieve savings made possible by changes in program requirements.

(b) RULE FOR CONSTRUCTION OF DUPLICATE PROVISIONS.—In applying the provisions of this title and the provisions of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 which make the same amendments as the provisions of this title—

(1) the identical provisions of title 38, United States Code, amended by the provisions of this title and the provisions of such Act shall be treated as having been amended only once; and

(2) in executing to title 38, United States Code, the amendments made by this title and by such Act, such amendments shall be executed so as to appear only once in the law.

TITLE VIII—BUDGET POLICY AND FISCAL PROCEDURES

SEC. 8001. DEFENSE AND DOMESTIC DISCRETIONARY SPENDING LIMITS.

(a) AGGREGATE ALLOCATIONS FOR DEFENSE.—The levels of budget authority and budget outlays for fiscal years 1988 and 1989 for major functional category 050 (National Defense) shall be:

(1) Fiscal year 1988:

(A) New budget authority, $292,000,000,000.

(B) Outlays, $285,400,000,000.

(2) Fiscal year 1989:

(A) New budget authority, $299,500,000,000.

(B) Outlays, $294,000,000,000.

(b) AGGREGATE ALLOCATIONS FOR DOMESTIC DISCRETIONARY SPENDING.—The levels of total budget authority and total budget outlays for fiscal years 1988 and 1989 for all discretionary spending

in categories other than major functional category 050 (National Defense) shall be:

(1) Fiscal year 1988:

(A) New budget authority, $162,900,000,000.

(B) Outlays, $176,800,000,000.

(2) Fiscal year 1989:

(A) New budget authority, $166,200,000,000.

(B) Outlays, $185,300,000,000.

(c) FISCAL YEAR 1989 BUDGET RESOLUTION.—

(1) HOUSE OF REPRESENTATIVES.—The Committee on the Budget of the House of Representative shall report a concurrent resolution on the budget for fiscal year 1989, pursuant to section 301 of the Congressional Budget Act of 1974, in accordance with the appropriate levels of budget authority and budget outlays for major functional category 050 (National Defense) and for all discretionary spending in categories other than major functional category 050 as set forth in subsections (a)(2) and (b)(2).

(2) POINT OF ORDER IN THE SENATE ON AGGREGATE ALLOCATIONS FOR DEFENSE AND DOMESTIC DISCRETIONARY SPENDING FOR FISCAL YEAR 1989.—

(A) Except as provided in subparagraph (E), it shall not be in order in the Senate to consider any concurrent resolution on the budget for fiscal year 1989 (including a conference report thereon), or any amendment to such a resolution, that would fail to be consistent with the allocations in subsections (a) and (b) for such fiscal year.

(B) Subparagraph (A) may be waived or suspended by a vote of three-fifths of the Members of the Senate, duly chosen and sworn.

(C) If the ruling of the presiding officer of the Senate sustains a point of order raised pursuant to subparagraph (A), a vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of such ruling. Debate on any such appeal shall be limited to two hours, to be equally divided between, and controlled by, the Majority and Minority Leaders, or their designees.

(D) For purposes of this paragraph, the levels of new budget authority, spending authority as described in section 401(c)(2), outlays, and new credit authority for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(E) This paragraph shall not apply if a declaration of war by the Congress is in effect or if a resolution pursuant to section 254(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

(d) ALLOCATIONS PURSUANT TO FISCAL YEAR 1989 BUDGET RESOLUTION.—(1) The allocations required to be included in the joint explanatory statement accompanying the conference report on the concurrent resolution on the budget for fiscal year 1989, pursuant to section 302(a) of the Congressional Budget Act of 1974, shall be based upon the levels set forth in subsections (a)(2) and (b)(2) of this section.

(2) The Committee on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other

House, make the subdivisions required under section 302(b)(1) of the Congressional Budget Act of 1974 consistent with the allocations in subsections (a)(2) and (b)(2) for fiscal year 1989.

SEC. 8002. RESTORATION OF FUNDS SEQUESTERED.

(a) ORDER RESCINDED.—Upon the enactment of this Act and House Joint Resolution 395, 100th Congress, 1st session, the orders issued by the President on October 20, 1987, and November 20, 1987, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby rescinded.

(b) AMOUNTS RESTORED.—Except as otherwise provided in sections 4001, 4041(b), and 4061, any action taken to implement the orders referred to in subsection (a) shall be reversed, and any sequesterable resource that has been reduced or sequestered by such orders is hereby restored, revived, or released and shall be available to the same extent and for the same purpose as if the orders had not been issued.

SEC. 8003. TECHNICAL AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

(a) REFERENCES IN SECTION.—Except as otherwise specifically provided, whenever in this section an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Congressional Budget and Impoundment Control Act of 1974.

(b) REVISION OF TABLE OF CONTENTS.—Section 1(b) is amended by striking "Disapproval of proposed deferrals" and inserting "Proposed deferrals".

(c) REDESIGNATION OF SUBPARAGRAPH HEADINGS.—Section 3(7) (as amended by section 106(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) is amended by—

(1) striking section 3(7)(C);
(2) redesignating section 3(7)(D) as 3(7)(C);
(3) redesignating section 3(7)(E) as 3(7)(D);
(4) redesignating section 3(7)(F) as 3(7)(E);
(5) redesignating section 3(7)(G) as 3(7)(F);
(6) redesignating section 3(7)(H) as 3(7)(G); and
(7) redesignating section 3(7)(I) as 3(7)(H).

(d) GRAMMATICAL CLARIFICATION OF SECTION 305(c).—SECTION 305(c) (as amended by section 209 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) is amended by inserting a comma after "therewith".

(e) SUBSTITUTION OF "PROPOSED" FOR "MADE" WITH REGARD TO AMENDMENTS IN COMMITTEE.—Section 252(c)(2)(F)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by section 102(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) is amended by striking "made" and inserting "proposed".

(f) CLARIFICATION OF BUDGET BASELINE.—Section 251(a)(6)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by section 102(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) is amended by striking out "and" before "contract authority" and by inserting before the semicolon at the end thereof the following: ", and that authority to

provide insurance through the Federal Housing Administration Fund is continued".

SEC. 8004. PREPARATION OF PRINTED ENROLLED BILL.

(a) PREPARATION OF PRINTED ENROLLMENT.—(1) Upon the enactment of this Act enrolled as a hand enrollment, the Clerk of the House of Representatives shall prepare a printed enrollment of this Act as in the case of a bill or joint resolution to which sections 106 and 107 of title 1, United States Code, apply. Such enrollment shall be a correct enrollment of this Act as enrolled in the hand enrollment.

(2) A printed enrollment prepared pursuant to paragraph (1) may, in order to conform to customary style for printed laws, include corrections in spelling, punctuation, indentation, type face, and type size and other necessary stylistic corrections to the hand enrollment. Such a printed enrollment shall include notations (in the margins or as otherwise appropriate) of all such corrections.

(b) TRANSMITTAL TO PRESIDENT.—A printed enrollment prepared pursuant to subsection (a) shall be signed by the presiding officers of both Houses of Congress as a correct printing of the hand enrollment of this Act and shall be transmitted to the President.

(c) CERTIFICATION BY PRESIDENT; LEGAL EFFECT.—Upon certification by the President that a printed enrollment transmitted pursuant to subsection (b) is a correct printing of the hand enrollment of this Act, such printed enrollment shall be considered for all purposes as the original enrollment of this Act and as valid evidence of the enactment of this Act.

(d) ARCHIVES.—A printed enrollment certified by the President under subsection (c) shall be transmitted to the Archivist of the United States, who shall preserve it with the hand enrollment. In preparing this Act for publication in slip form and in the United States Statutes at Large pursuant to section 112 of title 1, United States Code, the Archivist of the United States shall use the printed enrollment certified by the President under subsection (c) in lieu of the hand enrollment.

(e) HAND ENROLLMENT DEFINED.—As used in this section, the term "hand enrollment" means enrollment in a form other than the printed form required by sections 106 and 107 of title 1, United States Code, as authorized by the joint resolution entitled "Joint resolution authorizing the hand enrollment of the budget reconciliation bill and of the full-year continuing resolution for fiscal year 1988", approved December 1987 (H.J. Res. 426 of the 100th Congress).

SEC. 8005. ASSET SALES.

In the fiscal year 1989 budget process, Congress commits to pass legislation sufficient to achieve the budget summit agreement of $3,500,000,000 of asset sales in fiscal year 1989.

TITLE IX—INCOME SECURITY AND RELATED PROGRAMS

TABLE OF CONTENTS

Subtitle A—OASDI Provisions

PART 1—COVERAGE AND BENEFITS

SEC. 9001. COVERAGE OF INACTIVE DUTY MILITARY TRAINING.

(a) SOCIAL SECURITY ACT AMENDMENTS.—(1) Paragraph (1) of section 210(l) of the Social Security Act is amended to read as follows:

"(l)(1) Except as provided in paragraph (4), the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include—

"(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.".

(2) The second indented paragraph following subsection (s) in section 209 of such Act (relating to service in the uniformed services) is amended by striking "only his basic pay" and all that follows and inserting "only (1) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such section 210(l)(1) applies, or (2) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the

case of an individual performing service to which subparagraph (B) of such section 210(l)(1) applies.".

(b) FICA AMENDMENTS.—(1) Paragraph (1) of section 3121(m) of the Internal Revenue Code of 1986 (relating to inclusion of service in the uniformed services) is amended to read as follows:

"(1) INCLUSION OF SERVICE.—The term 'employment' shall, notwithstanding the provisions of subsection (b) of this section, include—

"(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed by an individual as a member of a uniformed service on inactive duty training.".

(2) Paragraph (2) of section 3121(i) of such Code (relating to computation of wages for individuals performing service in the uniformed services) is amended by striking "only his basic pay" and all that follows and inserting "only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such subsection (m)(1) applies, or (B) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies.".

(c) CONFORMING AMENDMENT.—Section 229(a) of the Social Security Act is amended by striking "section 210(l)" and inserting "210(l)(1)(A)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 9002. COVERAGE OF ALL CASH PAY OF AGRICULTURAL EMPLOYEES WHOSE EMPLOYERS SPEND $2,500 OR MORE A YEAR FOR AGRICULTURAL LABOR.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (2) of section 209(h) of the Social Security Act is amended by striking clause (B) and inserting "(B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;".

(b) FICA AMENDMENT.—Subparagraph (B) of section 3121(a)(8) of the Internal Revenue Code of 1986 (relating to wages) is amended by striking clause (ii) and inserting "(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration for agricultural labor paid after December 31, 1987.

SEC. 9003. COVERAGE OF THE EMPLOYER COST OF GROUP-TERM LIFE INSURANCE.

(a) COVERAGE UNDER OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.—

(1) SOCIAL SECURITY ACT AMENDMENT.—Clause (3) of section 209(b) of the Social Security Act is amended by striking "death" and inserting "death, except that this subsection does not apply to a payment for group-term life insurance to the extent that

such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986".

(2) FICA AMENDMENT.—Subparagraph (C) of section 3121(a)(2) of the Internal Revenue Code of 1986 (relating to wages) is amended by striking "death" and inserting "death, except that this paragraph does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to group-term life insurance coverage in effect after December 31, 1987.

SEC. 9004. COVERAGE OF SERVICES PERFORMED BY ONE SPOUSE IN THE EMPLOY OF THE OTHER.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 210(a)(3) of the Social Security Act is amended by striking "performed by an individual in the employ of his spouse, and service".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 210(a) of such Act is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(b) FICA AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 3121(b)(3) of the Internal Revenue Code of 1986 (relating to employment) is amended by striking "performed by an individual in the employ of his spouse, and service".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 3121(b) of such Code (relating to employment) is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 9005. TREATMENT OF SERVICE PERFORMED BY AN INDIVIDUAL IN THE EMPLOY OF A PARENT.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 210(a)(3) of the Social Security Act (as amended by section 9004(a)(1) of this Act) is further amended by striking "twenty-one" and inserting "18"

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 210(a)(3) of such Act (as amended by section 9004(a)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(b) FICA AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 3121(b)(3) of the Internal Revenue Code of 1986 (as amended by section 9004(b)(1) of this Act) is further amended by striking "21" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 3121(b)(3) of such Code (as amended by section 9004(b)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 9006. APPLICATION OF EMPLOYER TAXES TO EMPLOYEES' CASH TIPS.

(a) APPLICATION OF TAX TO TIPS.—Section 3121(q) of the Internal Revenue Code of 1986 (relating to inclusion of tips for employee taxes) is amended—

(1) by striking "EMPLOYEE TAXES" in the heading and inserting "BOTH EMPLOYEE AND EMPLOYER TAXES":

(2) by striking "other than for purposes of the taxes imposed by section 3111";

(3) by striking "remuneration for employment" and inserting "remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111)"; and

(4) by inserting after "at the time received" the following: "; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary".

(b) CONFORMING AMENDMENTS.—(1) Subsections (a) and (b) of section 3111(a) of such Code (relating to rate of tax on employers) are each amended by striking "and (t)".

(2) Section 3121(t) of such Code (relating to special rule) is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to tips received (and wages paid) on and after January 1, 1988.

SEC. 9007. APPLICABILITY OF GOVERNMENT PENSION OFFSET TO CERTAIN FEDERAL EMPLOYEES.

(a) WIFE'S INSURANCE BENEFITS.—Paragraph (4) of section 202(b) of the Social Security Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a wife's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the wife (or divorced wife) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(b) HUSBAND'S INSURANCE BENEFITS.—Paragraph (2) of section 202(c) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a husband's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the husband (or divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(c) WIDOW'S INSURANCE BENEFITS.—Paragraph (7) of section 202(e) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a widow's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k), paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was per-

formed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the widow (or surviving divorced wife) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(d) WIDOWER'S INSURANCE BENEFITS.—Paragraph (2) of section 202(f) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k), paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widower (or surviving divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the widower (or surviving divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(e) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Paragraph (4) of section 202(g) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a mother's or father's insurance benefit for each month (as determined after application of the provisions of subsection (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the individual for such month which is based upon the

individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day the individual was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the individual is eligible for benefits under this subsection and has made a valid application for such benefits."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to benefits for months after December 1987; except that nothing in such amendments shall affect any exemption (from the application of the pension offset provisions contained in subsection (b)(4), (c)(2), (e)(7), (f)(2), or (g)(4) of section 202 of the Social Security Act) which any individual may have by reason of subsection (g) or (h) of section 334 of the Social Security Amendments of 1977.

SEC. 9008. MODIFICATION OF AGREEMENT WITH IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN.

(a) IN GENERAL.—Notwithstanding subsection (d)(5)(A) of section 218 of the Social Security Act and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by a retirement system pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of Iowa has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date).

(b) SERVICE TO BE COVERED.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act (as so redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986)), any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

(1) all services performed in any policemen's or firemen's position to which the modification relates on or after January 1, 1987, and

(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

(A) no refund of the sums so paid has been obtained, or

(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within 90 days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.

SEC. 9009. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act is amended—

(1) in paragraph (1)(iii), by striking "June 1988" and inserting "June 1989"; and

(2) in paragraph (3)(B), by striking "January 1, 1988" and inserting "January 1, 1989".

SEC. 9010. EXTENSION OF DISABILITY RE-ENTITLEMENT PERIOD FROM 15 MONTHS TO 36 MONTHS.

(a) DISABILITY INSURANCE BENEFITS.—Paragraph (1) of section 223(a) of the Social Security Act is amended by striking "15 months" and inserting "36 months".

(b) CHILD'S INSURANCE BENEFITS BASED ON DISABILITY.—Clause (i) of section 202(d)(1)(G) of such Act is amended by striking "15 months" and inserting "36 months".

(c) WIDOW'S INSURANCE BENEFITS BASED ON DISABILITY.—Paragraph (1) of section 202(e) of such Act is amended, in subclause (II) of the last sentence, by striking "15 months" and inserting "36 months".

(d) WIDOWER'S INSURANCE BENEFITS BASED ON DISABILITY.—Paragraph (1) of section 202(f) of such Act is amended, in subclause (II) of the last sentence, by striking "15 months" and inserting "36 months".

(e) CONFORMING AMENDMENTS.—

(1) TERMINATION OF PERIOD OF DISABILITY.—Subparagraph (D) of section 216(i)(2) of such Act is amended by striking "15-month" and inserting "36-month".

(2) TERMINATION OF BENEFITS DURING RE-ENTITLEMENT PERIOD.—Subsection (e) of section 223 of such Act is amended by striking "15-month" and inserting "36-month".

(3) SPECIAL RULE FOR DETERMINATION OF CONTINUED MEDICARE ELIGIBILITY BASED ON ENTITLEMENT TO DISABILITY BENE-

FITS.—Section 226(b) of such Act is amended by adding at the end the following new sentence: "In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the second sentence of section 223(a) shall be applied as though the term '36 months' (in such second sentence) read '15 months'.".

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1988, and shall apply with respect to—

(1) individuals who are entitled to benefits which are payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 of the Social Security Act or subsection (a)(1) of section 223 of such Act for any month after December 1987, and

(2) individuals who are entitled to benefits which are payable under any provision referred to in paragraph (1) for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by this section has not elapsed as of January 1, 1988.

PART 2—OTHER SOCIAL SECURITY PROVISIONS

SEC. 9021. MORATORIUM ON REDUCTIONS IN ATTORNEYS' FEES; STUDIES OF ATTORNEYS' FEE PAYMENT SYSTEM.

(a) MORATORIUM.—(1) The provisions of the memorandum of the Associate Commissioner of Social Security dated March 31, 1987 (relating to revised delegations of authority for administrative law judges to determine fees of representatives) which amend sections 1-220 through 1-226 of the Office of Hearings and Appeals Staff Guides and Programs Digest (commonly referred to as the OHA Handbook), and Interim Circular No. 122 (relating to the determination authority regarding fees for representation of claimants), are hereby declared to be null and void. The preceding sentence shall apply with respect to all attorneys' fees finally authorized in connection with claims for benefits under title II of the Social Security Act on and after the date of the enactment of this Act, regardless of when the legal services involved were performed; and no reconsideration of any such fee finally authorized prior to that date shall be required.

(2) Until July 1, 1989, neither the Secretary nor the Social Security Administration may modify any of the rules and regulations relating to attorneys' fees in connection with claims for benefits under title II of the Social Security Act.

(b) STUDIES.—(1) The Secretary of Health and Human Services shall conduct a study of the attorneys' fee payment process under title II of the Social Security Act. Such study shall—

(A) assess the levels of reimbursement to attorneys, giving consideration to the contingent nature of most arrangements between claimants and their legal representatives, and propose alternative methods for establishing fees which take the nature of these arrangements into account, and

(B) suggest changes aimed at eliminating unnecessary delays in the approval and payment of attorneys' fees and thereby streamlining the payment process.

In conducting this study, the Secretary shall consult with individuals who represent the views of attorneys and with others who represent the views of claimants.

(2) At the same time, the Comptroller General shall conduct a study of the fee approval system, including at a minimum—

(A) a study of the impact of the current system on claimants and attorneys,

(B) an identification of obstacles to the timely payment of attorneys' fees under present law, and

(C) an assessment of the effect, if any, which the reduced limit on attorneys' fees in effect immediately prior to the enactment of this Act has had on access to legal representation by applicants for disability insurance benefits.

(3) The studies required by paragraphs (1) and (2), along with any recommendations resulting therefrom, shall be submitted to the Congress no later than July 1, 1988.

SEC. 9022. CORPORATE DIRECTORS.

(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"Any income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income is actually paid to or received by such individual (unless it was actually paid and received prior to that year).".

(b) SECA AMENDMENT.—Section 1402(a) of the Internal Revenue Code of 1986 (relating to definition of net earnings from self-employment) is amended by adding at the end thereof the following new paragraph:

"Any income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income is actually paid to or received by such individual (unless it was actually paid and received prior to that year).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services performed in taxable years beginning on or after January 1, 1988.

SEC. 9023. TECHNICAL CORRECTIONS.

(a) The heading of section 210(p) of the Social Security Act is amended to read as follows:

"Medicare Qualified Government Employment".

(b)(1) Section 211(a)(7) of such Act is amended—

(A) by inserting "and" before "section 911"; and

(B) by striking "and section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954".

(2) Section 211(a)(8) of such Act is amended to read as follows:

"(8) The exclusion from gross income provided by section 931 of the Internal Revenue Code of 1986 shall not apply;".

(c) Section 218(v) of such Act is amended—

(1) by striking "(v)" and inserting "(n)";

(2) by striking paragraph (3); and

(3) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(d) Section 3121(a)(5) of the Internal Revenue Code of 1986 is amended—

(1) by striking "; or" at the end of subparagraph (F) and inserting ", or"; and

(2) by striking the comma at the end of subparagraph (G) and inserting a semicolon.

PART 3—RAILROAD RETIREMENT PROGRAM

SEC. 9031. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYEES FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3201 of the Internal Revenue Code of 1986 (relating to tier 2 employee tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to compensation received after December 31, 1987.

SEC. 9032. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYERS FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3221 of the Internal Revenue Code of 1986 (relating to tier 2 employer tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to compensation paid after December 31, 1987.

SEC. 9033. COMMISSION ON RAILROAD RETIREMENT REFORM.

(a) COMMISSION ON RAILROAD RETIREMENT REFORM.—There is established a commission to be known as the Commission on Railroad Retirement Reform (in this section referred to as the "Commission").

(b) STUDY.—The Commission shall conduct a comprehensive study of the issues pertaining to the long-term financing of the railroad retirement system (in this section referred to as the "system") and the system's short-term and long-term solvency. The Commission shall submit a report containing a detailed statement of its findings and conclusions together with recommendations to the Congress for revisions in, or alternatives to, the current system to assure the provision of retirement benefits to former, present, and future railroad employees on an actuarially sound basis. The study will take into account—

(1) the possibility of restructuring the financing of railroad retirement benefits through increases in the tier 2 tax rate, increases in the tier 2 tax wage base, the imposition of a tax on operating revenues, revisions in the investment policy of the railroad retirement pension fund, and establishing a privately funded and administered railroad industry pension plan;

(2) the economic outlook for the railroad industry, and the nature of the relationships between the railroad retirement system, levels of railroad employment and compensation, and the performance of the rail sector;

(3) the ability of the system under current law to pay benefits to current and future retirees and other beneficiaries;

(4) the financial relationship of the system to the railroad unemployment insurance system, the social security system, and the General Fund; and

(5) any other matters which the Commission considers would be necessary, appropriate, or useful to the Congress in developing legislation to reform the system.

(c) MEMBERSHIP OF THE COMMISSION.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of seven members, as follows:

(A) four individuals appointed by the President—

(i) one of whom shall be appointed on the basis of recommendations made by representatives of employers (as defined in section 1(a) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employers concerned,

(ii) one of whom shall be appointed on the basis of recommendations made by representatives of employees (as defined in section 1(b) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employees concerned,

(iii) one of whom shall be appointed on the basis of recommendations made by representatives of commuter railroads, and

(iv) one of whom shall be appointed from members of the public;

(B) one individual appointed by the Speaker of the House of Representatives from among members of the public;

(C) one individual appointed by the President pro tempore of the Senate from among members of the public; and

(D) one individual appointed by the Comptroller General from among members of the public with expertise in the fields of retirement systems and pension plans.

All public members of the Commission shall be appointed from among individuals who are not in the employment of and are not pecuniarily or otherwise interested in any employer (as so defined) or organization of employees (as so defined). In making appointments under this section, the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall ensure that the members of the Commission, collectively, possess special knowledge of retirement income

policy, social insurance, private pensions, taxation, and the structure of the transportation industry. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(2) PAY.—Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(3) QUORUM.—Five members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(4) CHAIRMAN.—The members of the Commission shall elect a chairman from among the membership.

(d) STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.—

(1) STAFF.—Subject to such rules as may be prescribed by the Commission, the Chairman may appoint and fix the pay of such personnel as the Chairman considers appropriate.

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the Railroad Retirement Board and any other Federal agency may detail, on a reimbursable basis, any of the personnel thereof to the Commission to assist the Commission in carrying out its duties under this section.

(e) ACCESS TO OFFICIAL DATA AND SERVICES.—

(1) OFFICIAL DATA.—The Commission may, as appropriate, secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall, as appropriate, furnish such information to the Commission.

(2) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(3) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) REPORT.—The Commission shall transmit a report to the President and to each House of the Congress not later than October 1, 1989. The report shall contain a detailed statement of the findings

and conclusions of the Commission, together with its legislative recommendations.

(g) TERMINATION.—The Commission shall cease to exist 60 days after submitting its report pursuant to subsection (f).

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the sum of $1,000,000 for purposes of this section, to remain available until expended but in no event beyond the date of termination provided in subsection (g).

SEC. 9034. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended—

(1) by inserting "(other than amounts described in subparagraph (B))" after "amounts";

(2) by striking "1988" and inserting "1989"; and

(3) by striking the last sentence.

Subtitle B—Provisions Relating to Public Assistance and Unemployment Compensation

PART 1—AFDC AND SSI AMENDMENTS

SEC. 9101. PERMANENT EXTENSION OF DISREGARD OF NONPROFIT ORGANIZATIONS' IN-KIND ASSISTANCE TO SSI AND AFDC RECIPIENTS.

Effective as of October 1, 1987, section 2639(d) of the Deficit Reduction Act of 1984 is amended by striking "; but" and all that follows and inserting a period.

SEC. 9102. FRAUD CONTROL UNDER AFDC PROGRAM.

(a) IN GENERAL.—Part A of title IV of the Social Security Act is amended by adding at the end the following new section:

"FRAUD CONTROL

"SEC. 416. (a) Any State, in the administration of its State plan approved under section 402, may elect to establish and operate a fraud control program in accordance with this section.

"(b) Under any such program, if an individual who is a member of a family applying for or receiving aid under the State plan approved under section 402 is found by a Federal or State court or pursuant to an administrative hearing meeting requirements determined in regulations of the Secretary, on the basis of a plea of guilty or nolo contendere or otherwise, to have intentionally—

"(1) made a false or misleading statement or misrepresented, concealed, or withheld facts, or

"(2) committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity,

for the purpose of establishing or maintaining the family's eligibility for aid under such State plan or of increasing (or preventing a reduction in) the amount of such aid, then the needs of such individual shall not be taken into account in making the determination under section 402(a)(7) with respect to his or her family (A) for a period of 6 months upon the first occasion of any such offense, (B) for a period of 12 months upon the second occasion of any such of-

fense, and (C) permanently upon the third or a subsequent occasion of any such offense.

"(c) The State agency involved shall proceed against any individual alleged to have committed an offense described in subsection (b) either by way of administrative hearing or by referring the matter to the appropriate authorities for civil or criminal action in a court of law. The State agency shall coordinate its actions under this section with any corresponding actions being taken under the food stamp program in any case where the factual issues involved arise from the same or related circumstances.

"(d) Any period for which sanctions are imposed under subsection (b) shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the sanctions were imposed is subsequently reversed by a court of appropriate jurisdiction; but in no event shall the duration of the period for which such sanctions are imposed be subject to review.

"(e) The sanctions provided under subsection (b) shall be in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses involved.

"(f) Each State which has elected to establish and operate a fraud control program under this section must provide all applicants for aid to families with dependent children under its approved State plan, at the time of their application for such aid, with a written notice of the penalties for fraud which are provided for under this section."

(b) STATE PLAN REQUIREMENT.—Section 402(a) of such Act is amended—

(1) by striking "and" after the semicolon at the end of paragraph (38);

(2) by striking the period at the end of paragraph (39) and inserting "; and"; and

(3) by inserting immediately after paragraph (39) the following new paragraph:

"(40) provide, if the State has elected to establish and operate a fraud control program under section 416, that the State will submit to the Secretary (with such revisions as may from time to time be necessary) a description of and budget for such program, and will operate such program in full compliance with that section.".

(c) FEDERAL MATCHING.—Section 403(a)(3) of such Act is amended—

(1) by striking "and" after the final comma in subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) 75 percent of so much of such expenditures as are for the costs of carrying out a fraud control program under section 416, including costs related to the investigation, prosecution, and administrative hearing of fraudulent cases and the making of any resultant collections, and"; and

(4) by striking "(C)" in the matter following subparagraph (D) (as redesignated by paragraph (2) of this subsection) and inserting "(D)"

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective April 1, 1988.

SEC. 9103. EXCLUSION OF REAL PROPERTY WHEN IT CANNOT BE SOLD.

(a) IN GENERAL.—Section 1613(b) of the Social Security Act is amended—

(1) by inserting "(1)" after "(b)"; and

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

"(2) Notwithstanding the provisions of paragraph (1), the Secretary shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Secretary, the owner's reasonable efforts to sell it have been unsuccessful.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9104. ADJUSTMENT OF PENALTY WHERE ASSET IS TRANSFERRED FOR LESS THAN FAIR MARKET VALUE.

(a) IN GENERAL.—Section 1613(c) of the Social Security Act is amended—

(1) by inserting immediately after "the exclusions under subsection (a)" in paragraph (1) the following: ", and subject to paragraph (4) of this subsection"; and

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

"(4) The Secretary shall by regulation provide for suspending the application of paragraph (1) to the extent (in any instance) that the Secretary determines that such suspension is necessary to avoid undue hardship.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9105. EXCLUSION OF INTEREST ON BURIAL ACCOUNTS.

(a) IN GENERAL.—Section 1613(d) of the Social Security Act is amended—

(1) in paragraph (1), by striking "if the inclusion" and all that follows and inserting a period; and

(2) in paragraph (3), by striking "aside" and inserting "aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1611(a)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9106. EXCEPTION FROM SSI RETROSPECTIVE ACCOUNTING FOR AFDC AND CERTAIN OTHER ASSISTANCE PAYMENTS.

(a) IN GENERAL.—Section 1611(c) of the Social Security Act is amended—

(1) by striking "paragraphs (2), (3), and (4)" in paragraph (1) and inserting "paragraphs (2), (3), (4), and (5)";

(2) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

(3) by inserting after paragraph (4) the following new paragraph:

"(5) Notwithstanding paragraphs (1) and (2), any income which is paid to or on behalf of an individual in any month pursuant to (A) a State plan approved under part A of title IV of this Act (relating to aid to families with dependent children), (B) section 472 of this Act (relating to foster care assistance), (C) section 412(e) of the Immigration and Nationality Act (relating to assistance for refugees), (D) section 501(a) of Public Law 96-422 (relating to assistance for Cuban and Haitian entrants), or (E) the Act of November 2, 1921 (42 Stat. 208), as amended (relating to assistance furnished by the Bureau of Indian Affairs), shall be taken into account in determining the amount of the benefit under this title of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9107. TECHNICAL AMENDMENT RELATING TO 1986 AMENDMENT CONCERNING THE TREATMENT OF CERTAIN COUPLES IN MEDICAL INSTITUTIONS.

Effective November 10, 1986, section 1611(e)(5) of the Social Security Act is amended—

(1) by striking "sharing a room or comparable accommodation in a hospital, home, or facility" and inserting "living in the same hospital, home, or facility"; and

(2) by striking "shared such a room or accommodation" and inserting "lived in the same such hospital, home, or facility".

SEC. 9108. EXTENSION OF DEADLINE FOR DISABLED WIDOWS TO APPLY FOR MEDICAID PROTECTION UNDER 1984 AMENDMENTS.

Effective July 1, 1987, section 1634(b)(3) of the Social Security Act is amended by striking "during the 15-month period beginning with the month in which this subsection is enacted" and inserting "no later than July 1, 1988".

SEC. 9109. INCREASE IN SSI EMERGENCY ADVANCE PAYMENTS.

(a) IN GENERAL.—Section 1631(a)(4)(A) of the Social Security Act is amended by striking "a cash advance against such benefits in an amount not exceeding $100" and inserting "a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 9110. MODIFICATION OF INTERIM ASSISTANCE REIMBURSEMENT PROGRAM.

(a) IN GENERAL.—The first sentence of section 1631(g)(2) of the Social Security Act is amended by striking "at the time the Secretary makes the first payment of benefits" and inserting "at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3)".

(b) DEFINITION OF INTERIM ASSISTANCE.—Section 1631(g)(3) of such Act is amended—

(1) by inserting "(A)" after "basic needs"; and

(2) by inserting before the period at the end the following: ", or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective with the 13th month following the month in which this Act is enacted, or, if sooner, with the first month for which the Secretary of Health and Human Services determines that it is administratively feasible.

SEC. 9111. SPECIAL NOTICE TO BLIND RECIPIENTS.

(a) IN GENERAL.—(1) Section 1631 of the Social Security Act is amended by adding at the end the following new subsection:

"Special Notice to Blind Individuals with Respect to Hearings and Other Official Actions

"(l)(1) In any case where an individual who is applying for or receiving benefits under this title on the basis of blindness is entitled (under subsection (c) or otherwise) to receive notice from the Secretary of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this title, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Secretary and agreed to by the individual.

"(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this title on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this title until such time as it is revoked or changed.".

(2) Not later than one year after the date on which the amendment made by paragraph (1) becomes effective, the Secretary of Health and Human Services shall provide every individual receiving benefits under title XVI of the Social Security Act on the basis of blindness an opportunity to make an election under section 1631(l)(1) of such Act (as added by such amendment).

(b) STUDY.—The Secretary of Health and Human Services shall study the desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by section 1631(l) of the Social Security Act (as added by subsection (a) of this section) to other individuals who may lack the ability to read and comprehend regular written notices, and shall report the results of such study to the Congress, along with such recommendations as may be appropriate, within 12 months after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective July 1, 1988.

SEC. 9112. REHABILITATION SERVICES FOR BLIND SSI RECIPIENTS.

(a) IN GENERAL.—Section 1631(a)(6) of the Social Security Act is amended—

(1) by inserting "blindness (as determined under section 1614(a)(2)) or" before "disability (as determined under section 1614(a)(3))";

(2) by inserting "blindness or other" before "physical or mental impairment"; and

(3) by inserting "blindness and" before "disability benefit rolls" in subparagraph (B).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9113. EXTENDING THE NUMBER OF MONTHS THAT AN INDIVIDUAL IN A PUBLIC EMERGENCY SHELTER CAN BE ELIGIBLE FOR SSI.

(a) IN GENERAL.—Section 1611(e)(1)(D) of the Social Security Act is amended by striking "three months in any 12-month period" and inserting "6 months in any 9-month period".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a) shall become effective January 1, 1988.

(2) In the application of section 1611(e)(1)(D) of the Social Security Act on and after the effective date of such amendment, months before January 1988 in which a person was an eligible individual or eligible spouse by reason of such section shall not be taken into account.

SEC. 9114. EXCLUSION OF UNDERPAYMENTS FROM RESOURCES.

(a) IN GENERAL.—Section 1613(a)(7) of the Social Security Act is amended by inserting after "shall be limited to the first 6 months following the month in which such amount is received" the following: "(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective January 1, 1988.

SEC. 9115. CONTINUATION OF FULL BENEFIT STANDARD FOR INDIVIDUALS TEMPORARILY INSTITUTIONALIZED.

(a) IN GENERAL.—Section 1611(e)(1) of the Social Security Act is amended—

(1) in subparagraph (A), by striking "and (E)" and inserting "(E), and (G)";

(2) in subparagraph (B), by inserting "(subject to subparagraph (G))' ' after "throughout any month"; and

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

"(G) A person may be an eligible individual or eligible spouse for purposes of this title, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or which is a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or

spouse) under a State plan approved under title XIX, if it is determined in accordance with subparagraph (H) that—

"(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely (as certified by a physician) not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

"(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this title (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

"(H) The Secretary shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.".

(b) CONFORMING AMENDMENT.—Section 1902(l) of such Act is amended by striking "section 1611(e)(1)(E)" and inserting "subparagraph (E) or (G) of section 1611(e)(1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective July 1, 1988.

SEC. 9116. RETENTION OF MEDICAID WHEN SSI BENEFITS ARE LOST UPON ENTITLEMENT TO EARLY WIDOW'S OR WIDOWER'S INSURANCE BENEFITS.

(a) IN GENERAL.—Section 1634 of the Social Security Act is amended by adding at the end the following new subsection:

"(d) If any person—

"(1) applies for and obtains benefits under subsection (e) or (f) of section 202 (or under any other subsection of section 202 if such person is also eligible for benefits under such subsection (e) or (f)) as required by section 1611(e)(2), being then at least 60 years of age but not entitled to hospital insurance benefits under part A of title XVIII, and

"(2) is determined to be ineligible (by reason of the receipt of such benefits under section 202) for supplemental security income benefits under this title or for State supplementary payments of the type described in section 1616(a),

such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this title for purposes of title XIX, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments,

in the absence of such benefits under section 202, and (B) is not entitled to hospital insurance benefits under part A of title XVIII.".

(b) NOTICE.—The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act) issue a notice to all individuals who will have attained age 60 but not age 65 as of April 1, 1988, and who received supplemental security income benefits under title XVI of the Social Security Act prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act as added by subsection (a) of this section) under title II of that Act. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX.

(c) STATE DETERMINATIONS.—Any determination required under section 1634(d) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act (or State supplementary payments) in the absence of benefits under section 202 shall be made by the appropriate State agency.

(d) CONFORMING AMENDMENTS.—Section 1922(a)(2) of the Social Security Act is amended—

(1) by striking "1634 (b)" in subparagraph (B) and inserting "1634 (b) and (c)"; and

(2) by adding at the end the following new subparagraph:

"(C) Section 1634(d) of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 202 (e) or (f) of this Act).".

(e) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security (as described in section 1634(d)(2) of such Act) occurred before, on, or after the date of the enactment of this Act; but no individual shall be eligible for assistance under title XIX of such Act by reason of such amendments for any period before July 1, 1988.

SEC. 9117. DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") is authorized to make grants to States for projects designed to demonstrate and test the feasibility of special procedures and services to ensure that homeless individuals are provided SSI and other benefits under the Social Security Act to which they are entitled and receive assistance in using such benefits to obtain permanent housing, food, and health care. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary shall prescribe.

(b) SCOPE OF PROJECTS.—Projects for which grants are made under this section shall include, more specifically, procedures and

services to overcome barriers which prevent homeless individuals (particularly the chronically mentally ill) from receiving and appropriately using benefits, including—

(1) the creation of cooperative approaches between the Social Security Administration, State and local governments, shelters for the homeless, and other providers of services to the homeless;

(2) the establishment, where appropriate, of multi-agency SSI Outreach Teams (as described in subsection (c)), to facilitate communication between the agencies and staff involved in taking and processing claims for SSI and other benefits by the homeless who use shelters;

(3) special efforts to identify homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(4) the provision of special assistance to the homeless in applying for benefits, including assistance in obtaining and developing evidence of disability and supporting documentation for nondisability-related eligibility requirements;

(5) the provision of special training and assistance to public and private agency staff, including shelter employees, on disability eligibility procedures and evidentiary requirements;

(6) the provision of ongoing assistance to formerly homeless individuals to ensure their responding to information requests related to periodic redeterminations of eligibility for SSI and other benefits;

(7) the provision of assistance in ensuring appropriate use of benefit funds for the purpose of enabling homeless individuals to obtain permanent housing, nutrition, and physical and mental health care, including the use, where appropriate, of the disabled individual's representative payee for case management services; and

(8) such other procedures and services as the Secretary may approve.

(c) SSI OUTREACH TEAM PROJECTS.—(1) If a State applies for funds under this section for the purpose of establishing a multi-agency SSI Outreach Team, the membership and functions of such team shall be as follows (except as provided in paragraph (2)):

(A) The membership of the Team shall include a social services case worker (or case workers, if necessary); a consultative medical examiner who is qualified to provide consultative examinations for the Disability Determination Service of the State; a disability examiner, from the State Disability Determination Service; and a claims representative from an office of the Social Security Administration.

(B) The Team shall have designated members responsible for—

(i) identification of homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(ii) ensuring that such individuals understand their rights under the programs;

(iii) assisting such individuals in applying for benefits, including assistance in obtaining and developing evidence

and supporting documentation relating to disability- and nondisability-related eligibility requirements;

(iv) arranging transportation and accompanying applicants to necessary examinations, if needed; and

(v) providing for the tracking and monitoring of all claims for benefits by individuals under the project.

(2) If the Secretary determines that an application by a State for an SSI Outreach Team Project under this section which proposes a membership and functions for such Team different from those prescribed in paragraph (1) but which is expected to be as effective, the Secretary may waive the requirements of such paragraph.

(d) INFORMATION AND REPORTS; EVALUATION.—(1) Each State having an approved SSI Outreach Team Project shall periodically submit to the Secretary such information (with respect to the project) as may be necessary to enable the Secretary to evaluate such project in particular and the demonstration program under this section in general.

(2)(A) The Secretary shall from time to time (but not less often than annually) submit to the Congress a full and complete report on the program under this section, together with a detailed evaluation of such program and of the projects thereunder along with such recommendations as may be deemed appropriate. Such evaluation and such recommendations shall be designed to serve as a basis for determining whether (and to what extent) the activities and procedures included in the demonstration program under this section should be continued, expanded, or modified, or converted (with or without changes) into a regular feature of permanent law.

(B) The criteria used by the Secretary in evaluating the program and the projects thereunder shall not be limited to those which would normally be used in evaluating programs and activities of the kind involved, but shall fully take into account the special circumstances of the homeless and their need for personalized attention and follow-through assistance, and shall emphasize the extent to which the procedures and assistance made available to applicants under such projects are recognizing those circumstances and meeting that need.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

(A) the sum of $1,250,000 for the fiscal year 1988;

(B) the sum of $2,500,000 for the fiscal year 1989; and

(C) such sums as may be necessary for each fiscal year thereafter.

SEC. 9118. ASSISTANCE TO HOMELESS AFDC FAMILIES.

The Secretary of Health and Human Services may not take any action, prior to October 1, 1988, that would have the effect of implementing in whole or in part the proposed regulation published in the Federal Register on December 14, 1987, with respect to emergency assistance and the need for and amount of assistance under the program of aid to families with dependent children, or that would change current policy with respect to any of the matters addressed in such proposed regulation.

SEC. 9119. INCREASE IN PERSONAL NEEDS ALLOWANCE FOR SSI RECIPIENTS.

(a) INCREASE IN STANDARD.—Section 1611(e)(1)(B) of the Social Security Act is amended—

(1) by striking "$300 per year" in clauses (i) and (ii)(I) and inserting "$360 per year"; and

(2) by striking "$600 per year" in clause (iii) and inserting "$720 per year".

(b) MANDATORY PASS-THROUGH OF INCREASED PERSONAL NEEDS ALLOWANCE.—Section 1618 of such Act is amended by adding at the end the following new subsection:

"(g) In order for any State which makes supplementary payments of the type described in section 1616(a) (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66) to recipients of benefits determined under section 1611(e)(1)(B), on or after October 1, 1987, to be eligible for payments pursuant to title XIX with respect to any calendar quarter which begins—

"(1) after October 1, 1987, or, if later

"(2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined, such State must have in effect an agreement with the Secretary whereby the State will—

"(3) continue to make such supplementary payments to recipients of benefits so determined, and

"(4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with the month in which this subsection is first effective) that—

"(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for that particular month,

is not less than—

"(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

"(i) in a case to which clause (i) of such section 1611(e)(1)(B) applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by $5, and

"(ii) in a case to which clause (iii) of such section 1611(e)(1)(B) applies, by $10.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective July 1, 1988.

SEC. 9120. EXCLUSION OF DEATH BENEFITS TO THE EXTENT SPENT ON LAST ILLNESS AND BURIAL.

(a) IN GENERAL.—Subparagraphs (D) and (E) of section 1612(a)(2) of the Social Security Act are amended to read as follows:

"(D) payments to the individual occasioned by the death of another person, to the extent that the total of such pay-

ments exceeds the amount expended by such individual for purposes of the deceased person's last illness and burial;

"(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9121. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

(a) IN GENERAL.—Upon application of the State of Washington and approval by the Secretary of Health and Human Services, the State of Washington (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing whether the operation of its Family Independence Program enacted in May 1987 (in this section referred to as the "Program"), as an alternative to the AFDC program under title IV of the Social Security Act, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning.

(b) NATURE OF PROJECT.—Under the demonstration project conducted under this section—

(1) every individual eligible for aid under the State plan approved under section 402(a) of the Social Security Act shall be eligible to enroll in the Program, which shall operate simultaneously with the AFDC program so long as there are individuals who qualify for the latter;

(2) cash assistance shall be furnished in a timely manner to all eligible individuals under the Program (and the State may not make expenditures for services under the Program until it has paid all necessary cash assistance), with no family receiving less in cash benefits than it would have received under the AFDC program;

(3) individuals may be required to register, undergo assessment, and participate in work, education, or training under the Program, except that—

(A) work or training may not be required in the case of—

(i) a single parent of a child under six months of age, or more than one parent of such a child in a two-parent family,

(ii) a single parent with a child of any age who has received assistance for less than six months,

(iii) a single parent with a child under three years of age who has received assistance for less than three years,

(iv) an individual under 16 years of age or over 64 years of age,

(v) an individual who is incapacitated, temporarily ill, or needed at home to care for an impaired person, or

(vi) an individual who has not yet been individually notified in writing of such requirement or of the expiration of his or her exempt status under this subparagraph;

(B) participation in work or training shall in any case be voluntary during the first two years of the Program, and may thereafter be made mandatory only in counties where more than 50 percent of the enrollees can be placed in employment within three months after they are job ready;

(C) in no case shall the work and training aspect of the Program be mandated in any county where the unemployment level is at least twice the State average; and

(D) mandated work shall not include work in any position created by a reduction in the work force, a bona fide labor dispute, the decertification of a bargaining unit, or a new job classification which subverts the intention of the Program;

(4) there shall be no change in existing State law which would eliminate guaranteed benefits or reduce the rights of applicants or enrollees; and

(5) the Program shall include due process guarantees and procedures no less than those which are available to participants in the AFDC program under Federal law and regulation and under State law.

(c) WAIVERS.—The Secretary shall (with respect to the project under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the project or effectively achieving its purpose, or with the requirements of sections 1902(a)(1), 1902(e)(1), and 1916 of that Act (but only to the extent necessary to enable the State to carry out the program as enacted by the State in April 1987).

(d) FUNDING.—

(1) The Secretary, under section 403(b) or 1903(d) of the Social Security Act, shall reimburse the State for its expenditures under the Program—

(A) at a rate equal to the Federal matching rate applicable to the State under section 403(a)(1) (or 1118) of the Social Security Act, for cash assistance, medical assistance, and child care provided to enrollees;

(B) at a rate equal to the applicable Federal matching rate under section 403(a)(3) of such Act, for administrative expenses; and

(C) at the rate of 75 percent for an evaluation plan approved by the Secretary.

(2) As a condition of approval of the project under this section, the State must provide assurances satisfactory to the Secretary that the total amount of Federal reimbursement over the period of the project will not exceed the anticipated Federal reimbursements (over that period) under the AFDC and Medicaid programs; but this paragraph shall not prevent the State from claiming reimbursement for additional persons who would qualify for assistance under the AFDC program, for costs attributable to increases in the State's payment standard, or for any other federally-matched benefits or services.

(e) EVALUATION.—The State must satisfy the Secretary that the program will be evaluated using a reasonable methodology.

(f) DURATION OF PROJECT.—

(1) The project under this section shall begin on the date on which the first individual is enrolled in the Program and (subject to paragraph (2)) shall end five years after that date.

(2) The project may be terminated at any time, on six months' written notice, by the State or (upon a finding that the State has materially failed to comply with this section) by the Secretary.

SEC. 9122. CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE.

(a) IN GENERAL.—Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this section referred to as the "Secretary"), the State of New York (in this section referred to as the "State") may conduct a demonstration program in accordance with this section for the purpose of testing a State program as an alternative to the program of Aid to Families with Dependent Children under title IV of the Social Security Act.

(b) NATURE OF PROGRAM.—Under the demonstration program conducted under this section—

(1) all custodial parents of dependent children who are eligible for supplements under the State plan approved under section 402(a) of the Social Security Act (and such other types or classes of such parents as the State may specify) may elect to receive benefits under the State's Child Support Supplement Program in lieu of supplements under such plan; and

(2) the Federal Government will pay to the State with respect to families receiving benefits under the State's Child Support Supplement Program the same amounts as would have been payable with respect to such families under sections 403 and 1903 of the Social Security Act as if the families were receiving aid and medical assistance under the State plans in effect with respect to such sections.

(c) WAIVERS.—The Secretary shall (with respect to the program under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the program or effectively achieving its purpose.

(d) CONDITIONS OF APPROVAL.—As a condition of approval of the program under this section, the State shall—

(1) provide assurances satisfactory to the Secretary that the State—

(A) will continue to make assistance available to all eligible children in the State who are in need of financial support, and

(B) will continue to operate an effective child support enforcement program;

(2) agree—

(A) to have the program evaluated, and

(B) to report interim findings to the Secretary at such times as the Secretary shall provide; and

(3) satisfy the Secretary that the program will be evaluated using a reasonable methodology that can determine whether changes in work behavior and changes in earnings are attributable to participation in the program.

(e) APPLICATION PROCESS.—In order to participate in the program under this section, the State must submit an application under this section not later than two years after the date of enactment of this Act. The Secretary shall approve or disapprove the application of the State not later than 90 days after the date of its submission. If the application is disapproved, the Secretary shall provide to the State a statement of the reasons for such disapproval, of the changes needed to obtain approval, and of the date by which the State may resubmit the application.

(f) EFFECTIVE DATE.—The program under this section shall commence not later than the first day of the third calendar quarter beginning on or after the date on which the application of the State is approved in accordance with subsection (e).

(g) DURATION OF PROGRAM.—

(1) Except as provided in paragraph (2), if the Secretary approves the application of the State, the demonstration program under this section shall be conducted for a period not to exceed five years.

(2)(A) The Governor of the State may before the end of the period described in paragraph (1) terminate the demonstration program under this section if the Governor finds that the program is not successful in testing the State's Child Support Supplement Program as an alternative to the program under title IV of the Social Security Act. The Governor shall notify the Secretary of the decision to terminate the program not less than three months prior to the date of such termination.

(B) The Secretary may terminate the program before the end of such period if the Secretary finds that the program is not in compliance with the terms of the application. The Secretary shall notify the Governor of the decision to terminate the program not less than three months prior to the date of such termination.

SEC. 9123. TECHNICAL CORRECTION.

The subsection of section 1631 of the Social Security Act which was added as subsection (j) by section 11006 of the Anti-Drug Abuse Act of 1986 is redesignated as subsection (m) and is moved to the end of such section 1631 so that it appears immediately after subsection (l) thereof (as added by section 9111(a) of this Act); and the heading of such subsection is amended to read as follows:

"Pre-Release Procedures for Institutionalized Persons"

PART 2—SOCIAL SERVICES, CHILD WELFARE SERVICES, AND OTHER PROVISIONS RELATING TO CHILDREN

SEC. 9131. PERMANENT EXTENSION OF AUTHORITY FOR VOLUNTARY FOSTER CARE PLACEMENTS.

(a) IN GENERAL.—Section 102 of the Adoption Assistance and Child Welfare Act of 1980 is amended—

(1) in subsection (a)(1) (in the matter preceding subparagraph (A)), by striking "and before October 1, 1987,";

(2) in subsection (c), by striking all that follows "September 30, 1979" and inserting a period; and

(3) in subsection (e), by striking "with respect to which the amendments made by this section are in effect".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective October 1, 1987.

SEC. 9132. 2-YEAR EXTENSION OF FOSTER CARE CEILING AND OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS TO CHILD WELFARE SERVICES.

(a) IN GENERAL.—Section 474 of the Social Security Act is amended—

(1) in paragraphs (1), (2)(A)(iii), (2)(B), (4)(B), and (5)(A)(ii) of subsection (b), by striking "through 1987" and inserting "through 1989";

(2) in paragraph (5)(A) of subsection (b) (in the matter preceding clause (i)), by striking "October 1, 1987" and inserting "October 1, 1989"; and

(3) in paragraphs (1) and (2) of subsection (c), by striking "through 1987" and inserting "through 1989".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective October 1, 1987.

SEC. 9133. MOTHER/INFANT FOSTER CARE.

(a) IN GENERAL.—Section 475(4) of the Social Security Act is amended—

(1) by inserting "(A)" after "(4)"; and

(2) by adding at the end the following new subparagraph:

"(B) In cases where—

"(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

"(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.".

(b) CONFORMING AMENDMENTS RELATING TO ELIGIBILITY UNDER OTHER PROGRAMS.—(1) Section 402(a)(24) of such Act is amended by striking "if an individual is receiving benefits under title XVI, then, for the period for which such benefits are received," and inserting the following: "if an individual is receiving benefits under title XVI or his costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made to his or her minor parent as provided in section 475(4)(B), then, for the period for which such benefits are received or such costs are so covered,".

(2) Section 472(h) of such Act is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are made under this section.".

(3)(A) Section 473(a)(2)(A) of such Act is amended—

(i) by striking "or" at the end of clause (i);

(ii) by adding "or" at the end of clause (ii); and

(iii) by adding after clause (ii) the following new clause:

"(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B),".

(B) Section 473(a)(2)(B)(iii) of such Act is amended by inserting "or (A)(iii)" after "(A)(ii)".

(4) Section 473(b) of such Act is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are being made under section 472.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective April 1, 1988.

SEC. 9134. INCREASED FUNDING FOR SOCIAL SERVICES BLOCK GRANTS.

(a) INCREASE IN FUNDING.—Section 2003(c) of the Social Security Act is amended—

(A) by striking "and" at the end of paragraph (2);

(B) in paragraph (3), by striking "year" the first place it appears and all that follows through the period and inserting "years 1984, 1985, 1986, and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and"; and

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

"(4) $2,750,000,000 for the fiscal year 1988.".

(b) REQUIREMENT THAT ADDITIONAL FUNDS SUPPLEMENT AND NOT SUPPLANT FUNDS AVAILABLE FROM OTHER SOURCES.—The additional $50,000,000 made available to the States for the fiscal year 1988 pursuant to the amendments made by subsection (a) shall—

(A) be used only for the purpose of providing additional services under title XX of the Social Security Act; and

(B) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated pursuant to such amendments, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to such amendments) for services in accordance with such title, and shall in no case supplant such funds from other sources or reduce the level thereof.

SEC. 9135. EXTENSION OF SOCIAL SERVICES BLOCK GRANT AND CHILD WELFARE SERVICES PROGRAMS TO AMERICAN SAMOA.

(a) SOCIAL SERVICES BLOCK GRANT PROGRAM.—(1) Section 1101(a)(1) of the Social Security Act is amended by inserting "American Samoa," after "Guam," in the last sentence.

(2)(A) Section 2003(a) of such Act is amended by adding at the end the following new sentence: "The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands de-

termined on the basis of the most recent data available at the time such allotment is determined.".

(B) Section 2003(b) of such Act is amended by inserting "American Samoa," after "the Virgin Islands," each place it appears.

(b) CHILD WELFARE SERVICES PROGRAM.—(1) Section 1101(a)(1) of such Act is amended by adding at the end thereof the following new sentence: "Such term when used in part B of title IV also includes American Samoa.".

(2) Section 421(b) of such Act is amended by striking "and Guam" and inserting "Guam, and American Samoa".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1988.

SEC. 9136. NATIONAL COMMISSION ON CHILDREN.

Part A of title XI of the Social Security Act is amended by adding at the end the following new section:

"NATIONAL COMMISSION ON CHILDREN

"SEC. 1139. (a)(1) There is hereby established a commission to be known as the National Commission on Children (in this section referred to as the 'Commission').

"(b)(1) The Commission shall consist of—

"(A) 12 members to be appointed by the President,

"(B) 12 members to be appointed by the Speaker of the House of Representatives, and

"(C) 12 members to be appointed by the President pro tempore of the Senate.

"(2) The President, the Speaker, and the President pro tempore shall each appoint as members of the Commission—

"(A) 4 individuals who—

"(i) are representatives of organizations providing services to children,

"(ii) are involved in activities on behalf of children, or

"(iii) have engaged in academic research with respect to the problems and needs of children,

"(B) 4 individuals who are elected or appointed public officials (at the Federal, State, or local level) involved in issues and programs relating to children, and

"(C) 4 individuals who are parents or representatives of parents or parents' organizations.

"(3) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal programs.

"(c)(1) It shall be the duty and function of the Commission to serve as a forum on behalf of the children of the Nation and to conduct the studies and issue the report required by subsection (d).

"(2) The Commission (and any committees that it may form) shall conduct public hearings in different geographic areas of the country, both urban and rural, in order to receive the views of a broad spectrum of the public on the status of the Nation's children and on ways to safeguard and enhance the physical, mental, and emotional well-being of all of the children of the Nation, including those with

physical or mental disabilities, and others whose circumstances deny them a full share of the opportunities that parents of the Nation may rightfully expect for their children.

"(3) The Commission shall receive testimony from individuals, and from representatives of public and private organizations and institutions with an interest in the welfare of children, including educators, health care professionals, religious leaders, providers of social services, representatives of organizations with children as members, elected and appointed public officials, and from parents and children speaking in their own behalf.

"(d) The Commission shall submit to the President, and to the Committees on Finance and Labor and Human Resources of the Senate and the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives, an interim report no later than September 30, 1988, and a final report no later than March 31, 1989, setting forth recommendations with respect to the following subjects:

"(1) Questions relating to the health of children that the Commission shall address include—

"(A) how to reduce infant mortality,

"(B) how to reduce the number of low-birth-weight babies,

"(C) how to reduce the number of children with chronic illnesses and disabilities,

"(D) how to improve the nutrition of children,

"(E) how to promote the physical fitness of children,

"(F) how to ensure that pregnant women receive adequate prenatal care,

"(G) how to ensure that all children have access to both preventive and acute care health services, and

"(H) how to improve the quality and availability of health care for children.

"(2) Questions relating to social and support services for children and their parents that the Commission shall address include—

"(A) how to prevent and treat child neglect and abuse,

"(B) how to provide help to parents who seek assistance in meeting the problems of their children,

"(C) how to provide counseling services for children,

"(D) how to strengthen the family unit,

"(E) how children can be assured of adequate care while their parents are working or participating in education or training programs,

"(F) how to improve foster care and adoption services,

"(G) how to reduce drug and alcohol abuse by children and youths, and

"(H) how to reduce the incidence of teenage pregnancy.

"(3) Questions relating to education that the Commission shall address include—

"(A) how to encourage academic excellence for all children at all levels of education,

"(B) how to use preschool experiences to enhance educational achievement,

"(C) how to improve the qualifications of teachers,

"(D) how schools can better prepare the Nation's youth to compete in the labor market,

"(E) how parents and schools can work together to help children achieve success at each step of the academic ladder,

"(F) how to encourage teenagers to complete high school and remain in school to fulfill their academic potential,

"(G) how to address the problems of drug and alcohol abuse by young people,

"(H) how schools might lend support to efforts aimed at reducing the incidence of teenage pregnancy, and

"(I) how schools might better meet the special needs of children who have physical or mental handicaps.

"(4) Questions relating to income security that the Commission shall address include—

"(A) how to reduce poverty among children,

"(B) how to ensure that parents support their children to the fullest extent possible through improved child support collection services, including services on behalf of children whose parents are unmarried, and

"(C) how to ensure that cash assistance to needy children is adequate.

"(5) Questions relating to tax policy that the Commission shall address include—

"(A) how to assure the equitable tax treatment of families with children,

"(B) the effect of existing tax provisions, including the dependent care tax credit, the earned income tax credit, and the targeted jobs tax credit, on children living in poverty,

"(C) whether the dependent care tax credit should be refundable and the effect of such a policy,

"(D) whether the earned income tax credit should be adjusted for family size and the effect of such a policy, and

"(E) whether there are other tax-related policies which would reduce poverty among children.

"(6) In addition to addressing the questions specified in paragraphs (1) through (5), the Commission shall—

"(A) seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all available resources, in a coordinated and comprehensive manner, and

"(B) assess the existing capacities of agencies to collect and analyze data on the status of children and on relevant programs, identify gaps in the data collection system, and recommend ways to improve the collection of data and the coordination among agencies in the collection and utilization of data.

The reports required by this subsection shall be based upon the testimony received in the hearings conducted pursuant to subsection (c), and upon other data and findings developed by the Commission.

"(e)(1)(A) Members of the Commission shall first be appointed not later than 60 days after the date of the enactment of this section, for terms ending on March 31, 1989.

"(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

"(2) The Commission shall elect one of its members to serve as Chairman of the Commission. The Chairman shall be a nonvoting member of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

"(4)(A) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission.

"(B) The Commission shall meet not less than 4 times during the period beginning with the date of the enactment of this section and ending with March 31, 1989.

"(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

"(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

"(f)(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

"(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(g) In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

"(h)(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

"(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

"(i) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

"(j) There are authorized to be appropriated such sums as may be necessary to carry out this section.".

SEC. 9137. BOARDER BABIES DEMONSTRATION PROJECT.

Section 426 of the Social Security Act is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting immediately after subsection (a) the following new subsection:

"(b)(1) There are authorized to be appropriated $4,000,000 for each of the fiscal years 1988, 1989, and 1990 for grants by the Secretary to public or private nonprofit entities submitting applications under this subsection for the purpose of conducting demonstration projects under this subsection to develop alternative care arrangements for infants who do not have health conditions that require hospitalization and who would otherwise remain in inappropriate hospital settings.

"(2) The demonstration projects conducted under this section may include—

"(A) multidisciplinary projects designed to prevent the inappropriate hospitalization of infants and to allow infants described in paragraph (1) to remain with or return to a parent in a residential setting, where appropriate care for the infant and suitable treatment for the parent (including treatment for drug or alcohol addiction) may be assured, with the goal (where possible) of rehabilitating the parent and eliminating the need for such care for the infant;

"(B) multidisciplinary projects that assure appropriate, individualized care for such infants in a foster home or other non-medical residential setting in cases where such infant does not require hospitalization and would otherwise remain in inappropriate hospital settings, including projects to demonstrate methods to recruit, train, and retain foster care families; and

"(C) such other projects as the Secretary determines will best serve the interests of such infants and will serve as models for projects that agencies or organizations in other communities may wish to develop.

"(3) In the case of any project which includes the use of funds authorized under this subsection for the care of infants in foster homes or other non-medical residential settings away from their parents, there shall be developed for each such infant a case plan of the type described in section 475(1) (to the extent that such infant is not otherwise covered by such a plan), and each such project shall include a case review system of the type described in section 475(5) (covering each such infant who is not otherwise subject to such a system).

"(4) In evaluating applications from entities proposing to conduct demonstration projects under this subsection, the Secretary shall give priority to those projects that serve areas most in need of alternative care arrangements for infants described in paragraph (1).

"(5) No project may be funded unless the application therefor contains assurances that it will—

"(A) provide for adequate evaluation;

"(B) provide for coordination with local governments;

"(C) provide for community education regarding the inappropriate hospitalization of infants;

"(D) use, to the extent practical, other available private, local, State, and Federal sources for the provision of direct services; and

"(E) meet such other criteria as the Secretary may prescribe.

"(6) Grants may be used to pay the costs of maintenance and of necessary medical and social services (to the extent that these costs

are not otherwise paid for under other titles of this Act), and for such other purposes as the Secretary may allow.

"(7) The Secretary shall provide training and technical assistance to grantees, as requested.".

SEC. 9138. STUDY OF INFANTS AND CHILDREN WITH AIDS IN FOSTER CARE.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct (or arrange for) a survey to determine—

(1) the total number of infants and children in the United States who have been diagnosed as having acquired immune deficiency syndrome and who have been placed in foster care;

(2) the problems encountered by social service agencies in placing infants and children with such syndrome in foster care; and

(3) the potential increase (over the five-year period beginning on the date of the enactment of this Act) in the number of infants and children with such syndrome who will require foster care.

For purposes of this section, an infant or child with acquired immune deficiency syndrome includes an infant or child who is infected with the virus associated with such syndrome.

(b) RESTRICTION ON SCOPE OF SURVEY.—In conducting (or arranging for) the survey under subsection (a), the Secretary shall assure that survey activities do not duplicate research activities conducted by the Centers for Disease Control.

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall report to the Congress on the results of the survey conducted under subsection (a) and shall make recommendations to the Congress with respect to improving the care of infants and children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

SEC. 9139. TECHNICAL CORRECTIONS.

(a) The last sentence of section 472(a) of the Social Security Act is amended by striking out "473(a)(1)(B)" and inserting in lieu thereof "473(a)(2)(B)".

(b) Section 201(b)(2)(B) of the Immigration Reform and Control Act of 1986 is amended by striking out "Section 473(a)(1) of such Act" and inserting in lieu thereof "Section 473(a)(2) of such Act (as amended by section 1711(a) of the Tax Reform Act of 1986)".

PART 3—CHILD SUPPORT ENFORCEMENT AMENDMENTS

SEC. 9141. CONTINUATION OF CHILD SUPPORT ENFORCEMENT SERVICES TO FAMILIES NO LONGER RECEIVING AFDC.

(a) IN GENERAL.—(1) Section 457(c) of the Social Security Act is amended to read as follows:

"(c) Whenever a family with respect to which child support enforcement services have been provided pursuant to section 454(4) ceases to receive assistance under part A of this title, the State shall provide appropriate notice to the family and continue to provide such services, and pay any amount of support collected, subject to the same conditions and on the same basis as in the case of the individuals to whom services are furnished pursuant to section 454(6), except that no application or other request to continue services shall

be required of a family to which this subsection applies, and the provisions of section 454(6)(B) may not be applied.".

(2) Section 454(5) of such Act is amended by striking "(except as provided in section 457(c))".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective upon enactment.

SEC. 9142. CHILD SUPPORT ENFORCEMENT SERVICES REQUIRED FOR CERTAIN FAMILIES RECEIVING MEDICAID.

(a) IN GENERAL.—Section 454 of the Social Security Act is amended—

(1)(A) by striking "an assignment under section 402(a)(26) of this title" in paragraph (4)(A) and inserting "an assignment under section 402(a)(26) or section 1912";;

(B) by striking ", and" at the end of paragraph (4)(A) and inserting ", or, in the case of such a child with respect to whom an assignment under section 1912 is in effect, the State agency administering the plan approved under title XIX determines pursuant to section 1912(a)(1)(B) that it is against the best interests of the child to do so, and"; and

(C) by inserting "or medical assistance under a State plan approved under title XIX" immediately after "aid to families with dependent children" in paragraph (4)(B); and

(2)(A) by striking "provide that," and inserting "provide that (A)" in paragraph (5); and

(B) by striking the semicolon at the end of paragraph (5) and inserting "; and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1912, such payments shall be made to the State for distribution pursuant to section 1912, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on July 1, 1988.

SEC. 9143. REPEAL OF UNNECESSARY CHILD SUPPORT REVOLVING FUND.

(a) IN GENERAL.—Section 452(c) of the Social Security Act is amended to read as follows:

"(c) The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 457 the amount of each collection made on behalf of such State pursuant to subsection (b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts collected after the date of the enactment of this Act.

PART 4—UNEMPLOYMENT COMPENSATION

SEC. 9151. DETERMINATION OF AMOUNT OF FEDERAL SHARE WITH RESPECT TO CERTAIN EXTENDED BENEFITS PAYMENTS.

For the purpose of determining the amount of the Federal payment to any State under section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 with respect to the implementation of paragraph (3) of section 202 (a) of such Act (as added by section 1024(a) of the Omnibus Reconciliation Act of 1980),

such paragraph shall be considered to apply only with respect to weeks of unemployment beginning after October 31, 1981, except that for any State in which the State legislature did not meet in 1981, it shall be considered to apply for such purpose only with respect to weeks of unemployment beginning after October 31, 1982.

SEC. 9152. DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCES FOR ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

(1) apply to participate in such program, and

(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

(b) SELECTION OF STATES.—(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

(B) existing local market conditions and the business climate for new, small business enterprises in the State;

(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

(E) the design of the evaluation to be applied by the State to the program; and

(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed.

(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

(c) PROVISIONS OF AGREEMENTS.—Any agreement entered into with a State under this section shall provide that—

(1) each individual who is an eligible individual with respect to any benefit year beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation,

as long as the individual meets the requirements applicable under this section to such individual;

(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

(5) the State shall implement a program that—

(A) is approved by the Secretary;

(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

(D) otherwise meets the requirements of this section; and

(6) the State, from its general revenue funds, shall—

(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

(d) EVALUATION.—(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on an experimental design with random assignment between a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under this section, to formulate the reports under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

(e) FINANCING.—(1) Notwithstanding section 303(a)(5) of the Social Security Act and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensation Act of 1970, payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

(g) REPORT TO CONGRESS.—(1) Not later than two years after the date of the enactment of this Act, the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

(A) information on the extent to which this section has been utilized;

(B) an analysis of any barriers to such utilization; and

(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

(2) Not later than four years after the date of the enactment of this Act, the Secretary shall submit a final report to the Congress on such program.

(h) FRAUD AND OVERPAYMENTS.—(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

(A) ineligible for further assistance under this section; and

(B) subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

(ii) such repayment would be contrary to equity and good conscience.

(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph

shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(i) DEFINITIONS.—For purposes of this section—

(1) the term "eligible individual" means, with respect to any benefit year, an individual who—

(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

(C) submits an application to the State agency for a self-employment allowance under this section; and

(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive regular compensation in a State at the beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

(2) the term "self-employment allowance" means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

(3) the terms "compensation", "extended compensation", "regular compensation", "benefit year", "State", and "State law", have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

SEC. 9153. EXTENSION OF FUTA TAX.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 3301 of the Federal Unemployment Tax Act (26 U.S.C. 3301) are amended to read as follows:

"(1) 6.2 percent in the case of calendar years 1988, 1989, and 1990; or

"(2) 6.0 percent in the case of calendar year 1991 and each calendar year thereafter;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wages paid on or after January 1, 1988.

SEC. 9154. TRANSFER OF FUNDS INTO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) IN GENERAL.—Section 901 of the Social Security Act (42 U.S.C. 1101) is amended by adding at the end the following new subsection:

"Transfers For Calendar Years 1988, 1989, and 1990

"(g)(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—

"(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1)

of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

"(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

"(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) with respect to wages paid during such calendar years.".

(b) INCREASE IN THE LIMITATION ON THE AMOUNTS IN SUCH ACCOUNTS.—(1) Section 902(a)(2) of such Act (42 U.S.C. 1102(a)(2)) is amended by striking out "one-eighth" and inserting in lieu thereof "five-eighths".

(2) Section 905(b)(2)(B) of such Act (42 U.S.C. 1105(b)(2)(B)) is amended by striking out "one-eighth" and inserting in lieu thereof "three-eighths".

(c) CONFORMING AMENDMENTS.—(1) Section 905(b)(1) of such Act (42 U.S.C. 1105(b)(1)) is amended by striking out the last sentence thereof.

(2) Section 901(c)(3)(C) of such Act (42 U.S.C. 1101(c)(3)(C)) is amended by striking out "(i)" and all that follows through the period and inserting in lieu thereof "a tax rate of 0.6 percent.".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 9155. INTEREST ON ADVANCES TO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.—Section 905(d) of the Social Security Act (42 U.S.C. 1105(d)) is amended—

(1) by striking out "(without interest)" and ", without interest,"; and

(2) by adding the following new sentence at the end: "Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.".

(b) FEDERAL UNEMPLOYMENT ACCOUNT.—Section 1203 of such Act (42 U.S.C. 1323) is amended—

(1) by striking out "(without interest)" and ", without interest,"; and

(2) by adding the following new sentence at the end: "Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest

shall be the multiple of one-eighth of 1 percent next lower than such average rate.".

(c) CONFORMING AMENDMENT.—Section 903(a)(1) of such Act (42 U.S.C. 1103(a)(1)) is amended by inserting "and interest" after "all advances".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to advances made on or after the date of the enactment of this Act.

SEC. 9156. CREDITING TO THE FEDERAL UNEMPLOYMENT ACCOUNT OF INTEREST EARNED ON ADVANCES TO THE STATES.

(a) IN GENERAL.—Section 1202 of the Social Security Act is amended by adding at the end the following new subsection:

"(c) Interest paid by States in accordance with this section shall be credited to the Federal unemployment account established by section 904(g) in the Unemployment Trust Fund.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest paid on advances made on or after the date of the enactment of this Act.

Subtitle C—Manufacturers Excise Tax on Certain Vaccines

SEC. 9201. MANUFACTURERS EXCISE TAX ON CERTAIN VACCINES.

(a) IN GENERAL.—Chapter 32 of the Internal Revenue Code of 1986 (relating to manufacturers excise taxes) is amended by inserting after subchapter B the following new subchapter:

"Subchapter C—Certain Vaccines

"SEC. 4131. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable vaccine sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

If the taxable vaccine is:	*The tax per dose is:*
DPT vaccine	*$4.56*
DT vaccine	*0.06*
MMR vaccine	*4.44*
Polio vaccine	*0.29.*

"(2) COMBINATIONS OF VACCINES.—If any taxable vaccine is included in more than 1 category of vaccines in the table contained in paragraph (1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts determined under such table for each category in which such vaccine is so included.

"(c) TERMINATION OF TAX IF AMOUNTS COLLECTED EXCEED PROJECTED FUND LIABILITY.—

"(1) IN GENERAL.—If the Secretary estimates under paragraph (3) that the Vaccine Injury Compensation Trust Fund would

not have a negative projected balance were the tax imposed by this section to terminate as of the close of any applicable date, no tax shall be imposed by this section after such date.

"(2) APPLICABLE DATE.—For purposes of paragraph (1), the term 'applicable date' means—

"(A) the close of any calendar quarter ending on or after December 31, 1992, and

"(B) the 1st date on which petitions may not be filed under section 2111 and 2111(a) of the Public Health Service Act by reason of section 2134 of such Act and each date thereafter.

"(3) ESTIMATES BY SECRETARY.—

"(A) IN GENERAL.—The Secretary shall estimate the projected balance of the Vaccine Injury Compensation Trust Fund as of—

"(i) the close of each calendar quarter ending on or after December 31, 1992, and

"(ii) such other times as are appropriate in the case of applicable dates described in paragraph (2)(B).

"(B) DETERMINATION OF PROJECTED BALANCE.—In determining the projected balance of the Fund as of any date, the Secretary shall assume that—

"(i) the tax imposed by this section will not apply after such date, and

"(ii) there shall be paid from such Trust Fund all claims made or to be made against such Trust Fund—

"(I) with respect to vaccines administered before October 1, 1992, in the case of an applicable date described in paragraph (2)(A), or

"(II) with respect to petitions filed under section 2111 or section 2111(a) of the Public Health Service Act, in the case of an applicable date described in paragraph (2)(B).

"SEC. 4132. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS RELATING TO TAXABLE VACCINES.—For purposes of this subchapter—

"(1) TAXABLE VACCINE.—The term 'taxable vaccine' means any vaccine—

"(A) which is listed in the table contained in section 4131(b)(1), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) DPT VACCINE.—The term 'DPT vaccine' means any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.

"(3) DT VACCINE.—The term 'DT vaccine' means any vaccine (other than a DPT vaccine) containing diphtheria toxoid or tetanus toxoid.

"(4) MMR VACCINE.—The term "MMR vaccine' means any vaccine against measles, mumps, or rubella. Not more than 1 tax shall be imposed by section 4131 on any MMR vaccine by

reason of being a vaccine against more than 1 of measles, mumps, or rubella.

"(5) POLIO VACCINE.—The term 'polio vaccine' means any vaccine containing polio virus.

"(6) VACCINE.—The term 'vaccine' means any substance designed to be administered to a human being for the prevention of 1 or more diseases.

"(7) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(8) IMPORTER.—The term 'importer' means the person entering the vaccine for consumption, use, or warehousing.

"(b) CREDIT OR REFUND WHERE VACCINE RETURNED TO MANUFACTURER, ETC., OR DESTROYED.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, whenever any vaccine on which tax was imposed by section 4131 is—

"(A) returned (other than for resale) to the person who paid such tax, or

"(B) destroyed,

the Secretary shall abate such tax or allow a credit, or pay a refund (without interest), to such person equal to the tax paid under section 4131 with respect to such vaccine.

"(2) CLAIM MUST BE FILED WITHIN 6 MONTHS.—Paragraph (1) shall apply to any returned or destroyed vaccine only with respect to claims filed within 6 months after the date the vaccine is returned or destroyed.

"(3) CONDITION OF ALLOWANCE OF CREDIT OR REFUND.—No credit or refund shall be allowed or made under paragraph (1) with respect to any vaccine unless the person who paid the tax establishes that he—

"(A) has repaid or agreed to repay the amount of the tax to the ultimate purchaser of the vaccine, or

"(B) has obtained the written consent of such purchaser to the allowance of the credit or the making of the refund.

"(4) TAX IMPOSED ONLY ONCE.—No tax shall be imposed by section 4131 on the sale of any vaccine if tax was imposed by section 4131 on any prior sale of such vaccine and such tax is not abated, credited, or refunded.

"(c) OTHER SPECIAL RULES.—

"(1) FRACTIONAL PART OF A DOSE.—In the case of a fraction of a dose, the tax imposed by section 4131 shall be the same fraction of the amount of such tax imposed by a whole dose.

"(2) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4131."

(b) CERTAIN PROVISIONS RELATING TO TAX-FREE SALES, ETC. NOT TO APPLY.—

(1) Subsection (a) of section 4221 of such Code (relating to certain tax-free sales) is amended by adding at the end thereof the following new sentence: "In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine

meets such requirements as the Secretary may by regulations prescribe."

(2) Paragraph (2) of section 6416(b) of such Code (relating to specified uses or resales) is amended by adding at the end thereof the following new sentence: "In the case of the tax imposed by section 4131, subparagraphs (B), (C), and (D) shall not apply and subparagraph (A) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe."

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 32 of such Code is amended by inserting after the item relating to subchapter B the following new item:

"Subchapter C. Certain vaccines."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1988.

SEC. 9202. VACCINE INJURY COMPENSATION TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end thereof the following new section:

"SEC. 9510. VACCINE INJURY COMPENSATION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Vaccine Injury Compensation Trust Fund', consisting of such amounts as may be credited to such Trust Fund as provided in section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—

"(1) IN GENERAL.—There are hereby appropriated to the Vaccine Injury Compensation Trust Fund amounts equivalent to the net revenues received in the Treasury from the tax imposed by section 4131 (relating to tax on certain vaccines).

"(2) NET REVENUES.—For purposes of paragraph (1), the term 'net revenues' means the amount estimated by the Secretary based on the excess of—

"(A) the taxes received in the Treasury under section 4131 (relating to tax on certain vaccines), over

"(B) the decrease in the tax imposed by chapter 1 resulting from the tax imposed by section 4131.

"(c) EXPENDITURES FROM TRUST FUND.—

"(1) IN GENERAL.—Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on the date of the enactment of this section) for vaccine-related injury or death with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

"(2) TRANSFERS FOR CERTAIN REPAYMENTS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Vaccine Injury Compensation Trust Fund into the general fund of the Treasury amounts equivalent to amounts paid under section 4132(b) and section 6416 with respect to the taxes imposed by section 4131.

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Vaccine Injury Compensation Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the National Childhood Vaccine Injury Act of 1986 (or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Vaccine Injury Compensation Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS TO BE PAID.—If at any time the Vaccine Injury Compensation Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1) be paid in full in the order in which they are finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end thereof the following new item:

"Sec. 9510. Vaccine Injury Compensation Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1988.

Subtitle D—Pension Provisions

PART I—FULL-FUNDING LIMITATIONS

SEC. 9301. FULL-FUNDING LIMITATION FOR DEDUCTIONS TO QUALIFIED PLANS.

(a) GENERAL RULE.—Paragraph (7) of section 412(c) of the Internal Revenue Code of 1986 (defining full-funding limitation) is amended to read as follows:

"(7) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) CURRENT LIABILITY.—For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (l)(7) (without regard to subparagraph (D) thereof).

"(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

"(D) REGULATORY AUTHORITY.—The Secretary may by regulations provide—

"(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants,

"(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i), and

"(iii) for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I)."

(b) AMENDMENT TO ERISA.—Paragraph (7) of section 302(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)) is amended to read as follows:

"(7) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) CURRENT LIABILITY.—For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (d)(7) (without regard to subparagraph (D) thereof).

"(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

"(D) REGULATORY AUTHORITY.—The Secretary of the Treasury may by regulations provide—

"(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants,

"(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i), and

"(iii) for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I)."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning after December 31, 1987.

(2) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as are necessary to carry out the amendments made by this section no later than August 15, 1988.

(3) STUDY.—The Secretary of the Treasury or his delegate shall study the effect of the amendments made by this section on benefit security under defined benefit pension plans and shall report the results of such study to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate no later than August 15, 1988.

PART II—PENSION FUNDING AND TERMINATION REQUIREMENTS

SEC. 9302. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This part may be cited as the "Pension Protection Act".

(b) DEFINITIONS.—For purposes of this part—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) ERISA.—The term "ERISA" means the Employee Retirement Income Security Act of 1974.

Subpart A—Modifications of Minimum Funding Standard

SEC. 9303. ADDITIONAL FUNDING REQUIREMENTS.

(a) AMENDMENTS TO 1986 CODE.—

(1) IN GENERAL.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection:

"(l) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability determined without regard to such benefit increase.

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 multiplied by

"(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the applicable percentage of the product of—

"(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

"(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs).

"(B) APPLICABLE PERCENTAGE.—

In the case of plan years beginning in:	*The applicable percentage is:*
1989 and 1990	*5*
1991	*10*
1992	*15*
1993	*20*
1994	*30*
1995	*40*
1996	*50*
1997	*60*
1998	*70*
1999	*80*
2000	*90*
2001 and thereafter	*100*

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987.

"(D) SPECIAL RULE FOR FIRST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary).

"(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individ-

ual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	*The applicable percentage is:*
1	*20*
2	*40*
3	*60*
4	*80*
5 or more	*100*

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), and (o) of section 414.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 412(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For additional requirements in the case of plans other than multiemployer plans, see subsection (l)."

(b) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Section 302 of ERISA (29 U.S.C. 1082) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined--

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability determined without regard to such benefit increase.

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 multiplied by

"(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the applicable percentage of the product of—

"(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

"(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs).

"(B) APPLICABLE PERCENTAGE.—

In the case of plan years beginning in:	The applicable percentage is:
1989 and 1990	5
1991	10
1992	15
1993	20
1994	30
1995	40
1996	50
1997	60
1998	70
1999	80
2000	90
2001 and thereafter	100

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987.

"(D) SPECIAL RULE FOR FIRST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary of the Treasury to reflect the application of this subparagraph.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to participants and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).

"(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	*The applicable percentage is:*
1	*20*
2	*40*
3	*60*
4	*80*
5 or more	*100*

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary of the Treasury shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(c) REVISION OF VALUATION REGULATIONS.—Effective with respect to plan years beginning after December 31, 1987, the provisions of the regulations prescribed under section 412(c)(2) of the 1986 Code which permit asset valuations to be based on a range between 85 percent and 115 percent of average value shall have no force and effect with respect to plans other than multiemployer plans (as defined in section 414(f) of the 1986 Code). The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.

(d) VALUATION OF BONDS.—

(1) AMENDMENT TO 1986 CODE.—Subparagraph (B) of section 412(c)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5)."

(2) AMENDMENT TO ERISA.—Subparagraph (B) of section 302(c)(2) of ERISA is amended by adding at the end thereof the following new sentence: "In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary of the Treasury may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5)."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply with respect to plan years beginning after December 31, 1988.

(2) SUBSECTIONS (C) AND (D).—The amendments made by subsections (c) and (d) shall apply with respect to years beginning after December 31, 1987.

(3) SPECIAL RULE FOR STEEL COMPANIES.—

(A) IN GENERAL.—For any plan year beginning before January 1, 1994, any increase in the funding standard account under section 412(l) of the 1986 Code or section 302(d) of ERISA (as added by this section) with respect to any steel employee plan shall not exceed the sum of—

(i) the required percentage of the current liability under such plan, plus

(ii) the amount determined under subparagraph (C)(i) for such plan year.

(B) REQUIRED PERCENTAGE.—For purposes of subparagraph (A), the term "required percentage" means, with respect to any plan year, the excess (if any) of—

(i) the sum of—

(I) the funded current liability percentage as of the beginning of the 1st plan year beginning after December 31, 1988 (determined without regard to any plan amendment adopted after June 30, 1987), plus

(II) 1 percentage point for the plan year for which the determination under this paragraph is being made and for each prior plan year beginning after December 31, 1988, over

(ii) the funded current liability percentage as of the beginning of the plan year for which such determination is being made.

(C) SPECIAL RULES FOR CONTINGENT EVENTS.—In the case of any unpredictable contingent event benefit with respect to which the event on which such benefits are contingent occurs after December 17, 1987—

(i) AMORTIZATION AMOUNT.—For purposes of subparagraph (A)(ii), the amount determined under this clause for any plan year is the amount which would be determined if the unpredictable contingent event benefit liability were amortized in equal annual installments over 10 plan years (beginning with the plan year in which such event occurs).

(ii) BENEFIT AND CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (B), in determining the funded current liability percentage for any plan year, there shall not be taken into account—

(I) the unpredictable contingent event benefit liability, or

(II) any amount contributed to the plan which is attributable to clause (i).

(D) STEEL EMPLOYEE PLAN.—For purposes of this paragraph, the term "steel employee plan" means any plan if—

(i) such plan is maintained by a steel company, and

(ii) substantially all of the employees covered by such plan are employees of such company.

(E) OTHER DEFINITIONS.—For purposes of this paragraph—

(i) STEEL COMPANY.—The term "steel company" means any corporation described in section 806(b) of the Steel Import Stabilization Act.

(ii) OTHER DEFINITIONS.—The terms "current liability", "funded current liability percentage", and "unpredictable contingent event benefit" have the meanings given such terms by section 412(l) of the 1986 Code (as added by this section).

(F) SPECIAL RULE.—The provisions of this paragraph shall apply in the case of a company which was originally incorporated on April 25, 1927, in Michigan and reincorporated on June 3, 1968, in Delaware in the same manner as if such company were a steel company.

SEC. 9304. TIME FOR MAKING CONTRIBUTIONS.

(a) PERIOD DURING WHICH CONTRIBUTIONS MAY BE MADE AFTER CLOSE OF YEAR.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (10) of section 412(c) of the 1986 Code (relating to time when certain contributions deemed made) is amended to read as follows:

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section—

"(A) PLANS OTHER THAN MULTIEMPLOYER PLANS.—In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the day which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) MULTIEMPLOYER PLANS.—In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary."

(2) AMENDMENT TO ERISA.—Paragraph (10) of section 302(c) of ERISA (relating to time when certain contributions deemed made) (29 U.S.C. 1082(c)(10) is amended to read as follows:

"(10) For purposes of this section—

"(A) In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the date which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half

month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987.

(b) QUARTERLY ESTIMATED PAYMENTS REQUIRED.—

(1) AMENDMENT TO 1986 CODE.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection:

"(m) QUARTERLY CONTRIBUTIONS REQUIRED.—

"(1) IN GENERAL.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) AMOUNT.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) PERIOD OF UNDERPAYMENT.—The period for which interest is charged under this subsection with regard to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(10)).

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

"(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

In the case of the following required installments:	***The due date is:***
1st	*April 15*
2nd	*July 15*
3rd	*October 15*
4th	*January 15 of the following year*

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 (without regard to any waiver under subsection (c) thereof), or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

For plan years beginning in:	*The applicable percentage is:*
1989	*6.25*
1990	*12.5*
1991	*18.75*
1992 and thereafter	*25*

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (l)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (l)(5)(A)(ii) for the plan year.

"(5) FISCAL YEARS AND SHORT YEARS.—

"(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) SHORT PLAN YEAR.—This subsection shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(2) AMENDMENT TO ERISA.—Section 302 of ERISA (29 U.S.C. 1082) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) QUARTERLY CONTRIBUTIONS REQUIRED.—

"(1) IN GENERAL.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for

any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) AMOUNT.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this subsection with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(10)).

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

"(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

In the case of the following required installments:	***The due date is:***
1st	*April 15*
2nd	*July 15*
3rd	*October 15*
4th	*January 15 of the following year*

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 of the Internal Revenue Code of 1986 (without regard to any waiver under subsection (c) thereof), or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

For plan years beginning in:	The applicable percentage is:
1989	6.25
1990	12.5
1991	18.75
1992 and thereafter	25

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year.

"(5) FISCAL YEARS AND SHORT YEARS.—

"(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) SHORT PLAN YEAR.—This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan years beginning after 1988.

(c) INCREASE IN EXCISE TAX FROM 5 PERCENT TO 10 PERCENT.—

(1) IN GENERAL.—Section 4971(a) of the 1986 Code (relating to initial tax on failure to meet minimum funding standards) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent (5 percent in the case of a multiemployer plan)".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after 1988.

(d) REQUIREMENT OF NOTICE.—Section 101 of ERISA (relating to duty of disclosure and reporting) (29 U.S.C. 1021) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) NOTICE OF FAILURE TO MEET MINIMUM FUNDING STANDARDS.—

"(1) IN GENERAL.—If an employer of a plan other than a multiemployer plan fails to make a required installment or other payment required to meet the minimum funding standard under section 302 to a plan before the 60th day following the due date for such installment or other payment, the employer shall notify each participant and beneficiary (including an alternate payee as defined in section 206(d)(3)(K)) of such plan of such failure. Such notice shall be made at such time and in such manner as the Secretary may prescribe.

"(2) SUBSECTION NOT TO APPLY IF WAIVER PENDING.—This subsection shall not apply to any failure if the employer has filed a waiver request under section 303 with respect to the plan year to which the required installment relates, except that if the waiver request is denied, notice under paragraph (1) shall be provided within 60 days after the date of such denial.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'required installment' and 'due date' have the same meanings given such terms by section 302(e)."

(e) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

(1) AMENDMENT TO 1986 CODE.—Section 412 of the 1986 Code (as amended by this subtitle) is amended by adding at the end thereof the following new subsection:

"(n) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—In the case of a plan to which this section applies, if—

"(A) any person fails to make a required installment under subsection (m) or any other payment required under this section before the due date for such installment or other payment, and

"(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (l)(8)(B)) of such plan is less than 100 percent.

"(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

"(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

"(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

"(i) for plan years beginning after 1987, and

"(ii) for which payment has not been made before the due date.

"(4) NOTICE OF FAILURE; LIEN.—

"(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the 60th day following the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

"(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

"(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (m), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section."

"(B) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414."

(2) AMENDMENT TO ERISA.—Section 302 of ERISA (as amended by this subtitle) (29 U.S.C. 1082) is amended by redesignating subsection (f) as subsection (g) and by adding after subsection (e) the following new subsection:

"(f) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—In the case of a plan to which this section applies, if—

"(A) any person fails to make a required installment under subsection (e) or any other payment required under this section before the due date for such installment or other payment, and

"(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (d)(8)(B)) of such plan is less than 100 percent.

"(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

"(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

"(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

"(i) for plan years beginning after 1987, and

"(ii) for which payment has not been made before the due date.

"(4) NOTICE OF FAILURE; LIEN.—

"(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the 60th day following the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

"(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

"(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (e), except that in the case of a payment other than a required installment, the due date

shall be the date such payment is required to be made under this section."

"(B) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987.

SEC. 9305. LIABILITY OF MEMBERS OF CONTROLLED GROUP FOR TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS AND TO MAKE MINIMUM FUNDING CONTRIBUTIONS.

(a) EXCISE TAX.—

(1) IN GENERAL.—Section 4971 of the 1986 Code (relating to taxes on failure to meet minimum funding standards) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the tax imposed by subsection (a) or (b) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a) or (b).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (a) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(B) Subsection (b) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(b) MINIMUM FUNDING CONTRIBUTIONS.—

(1) AMENDMENT TO 1986 CODE.—Section 412(c) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(11) LIABILITY FOR CONTRIBUTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (m) shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A).

"(B) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(i) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally

liable for payment of such contribution or required installment.

"(ii) CONTROLLED GROUP.—For purposes of clause (i), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) AMENDMENT TO ERISA.—Section 302(c) of ERISA (29 U.S.C. 1082(c)) is amended by adding at the end thereof the following new paragraph:

"(11) LIABILITY FOR CONTRIBUTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (e) shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A).

"(B) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(i) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

"(ii) CONTROLLED GROUP.—For purposes of clause (i), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(c) CONFORMING AMENDMENT.—Section 414(b) of the 1986 Code is amended by striking out "the minimum funding standard of section 412, the tax imposed by section 4971, and".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1987.

SEC. 9306. FUNDING WAIVERS.

(a) REQUIREMENTS FOR WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—Subsection (d) of section 412 of the 1986 Code (relating to variance from minimum funding standard) is amended by adding at the end thereof the following new paragraph:

"(4) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Subsection (d) of section 412 of the 1986 Code is amended—

(i) by striking out "substantial business hardship" in paragraphs (1) and (2) and inserting in lieu thereof "temporary substantial business hardship (substantial

business hardship in the case of a multiemployer plan)", and

(ii) by striking out "SUBSTANTIAL" in the headings of paragraphs (1) and (2).

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 412 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this subsection.

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) AMENDMENTS TO ERISA.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—Section 303 of ERISA (relating to variance from minimum funding standard) (29 U.S.C. 1083) is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsection:

"(d) SPECIAL RULES.—

"(1) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this section with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Section 303 of ERISA (29 U.S.C. 1083) is amended by striking out "substantial business hardship" in subsections (a) and (b) and inserting in lieu thereof "temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)".

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 303 of ERISA (as amended by subparagraph (A)) (29 U.S.C. 1083) is amended by adding at the end thereof the following new paragraph:

"(2) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of subsection (a) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this subsection.

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(b) FREQUENCY OF WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—The second sentence of section 412(d)(1) of the 1986 Code is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

(2) AMENDMENTS TO ERISA.—The second sentence of section 303(a) of ERISA (29 U.S.C. 1083(a)) is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

(c) INTEREST ON REPAYMENT OF WAIVED CONTRIBUTIONS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Paragraph (1) of section 412(d) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—

"(A) in the case of a plan other than a multiemployer plan, the greater of (i) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (ii) the rate of interest used under the plan in determining costs, and

"(B) in the case of a multiemployer plan, the rate determined under section 6621(b)."

(B) Subsection (e) of section 412 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (B) the rate of

interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621(b).".

(2) AMENDMENTS TO ERISA.—

(A) Subsection (a) of section 303 of ERISA (29 U.S.C. 1083(a)) is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—

"(A) in the case of a plan other than a multiemployer plan, the greater of (i) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (ii) the rate of interest used under the plan in determining costs, and

"(B) in the case of a multiemployer plan, the rate determined under section 6621(b).".

(B) Subsection (a) of section 304 of ERISA (29 U.S.C. 1084(a)) is amended by striking out the last sentence and inserting in lieu thereof the following new sentence:

"In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621(b) of such Code."

(d) NOTICE TO PARTICIPANTS OF APPLICATION FOR FUNDING WAIVERS.—

(1) AMENDMENT TO 1986 CODE.—Section 412 (f)(4)(A) of the 1986 Code (relating to advance notice) is amended by striking out "plan." and inserting in lieu thereof "plan, and each participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and the benefit liabilities.".

(2) AMENDMENT TO ERISA.—Section 303(e)(1) of ERISA (relating to advance notice) (29 U.S.C. 1083(e)(1)) is amended by striking out "plan." and inserting in lieu thereof "plan, and each affected party (as defined in section 4001(a)(21)) other than the Pension Benefit Guaranty Corporation. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and the benefit liabilities.".

(e) DECREASE IN AMOUNT OF DEFICIENCIES REQUIRED BEFORE SECURITY REQUIRED.—

(1) AMENDMENT TO 1986 CODE.—Subparagraph (C) of section 412 (f)(3) is amended by striking out "$2,000,000" and inserting in lieu thereof "$1,000,000".

(2) AMENDMENT TO ERISA.—Section 306(c)(1) of ERISA (29 U.S.C. 1085a(c)(1)) is amended by striking out "$2,000,000" and inserting in lieu thereof "$1,000,000".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply in the case of—

(A) any application submitted after December 17, 1987, and

(B) any waiver granted pursuant to such an application.

(2) SPECIAL RULE FOR APPLICATION REQUIREMENT.—

(A) IN GENERAL.—The amendments made by subsections (a)(1)(A) and (a)(2)(A) shall apply to plan years beginning after December 31, 1987.

(B) Transitional rule for years beginning in 1988.—In the case of any plan year beginning during calendar 1988, section 412(d)(4) of the 1986 Code and section 303(d)(1) of ERISA (as added by subsection (a)(1)) shall be applied by substituting "6th month" for "3rd month".

(3) FREQUENCY OF WAIVERS.—In applying the second sentence of section 412(d) of the 1986 Code and section 303(a) of ERISA to plans other than multiemployer plans, the number of waivers which may be granted pursuant to applications submitted after December 17, 1987, shall be determined without regard to waivers granted with respect to plan years beginning before January 1, 1988.

(4) SUBSECTION (d).—The amendments made by subsection (d) shall apply to applications submitted more than 90 days after the date of the enactment of this Act.

SEC. 9307. OTHER FUNDING CHANGES.

(a) AMORTIZATION PERIODS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Paragraphs (2)(B)(iv), (2)(C), and (3)(B)(ii) of section 412(b) of the 1986 Code are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)".

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 412(b) of the 1986 Code are each amended by striking out "30 plan years" and inserting in lieu thereof "10 plan years (30 plan years in the case of a multiemployer plan)".

(2) AMENDMENTS TO ERISA.—

(A) Paragraphs (2)(B)(iv), (2)(C), and (3)(B)(ii) of section 302(b) of ERISA (29 U.S.C. 1082(b)) are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)".

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 302(b) of ERISA (29 U.S.C. 1082(b)) are each amended by striking out "30 plan years" and inserting in lieu thereof "10 plan years (30 plan years in the case of a multiemployer plan)".

(b) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (3) of section 412(c) of the 1986 Code is amended to read as follows:

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) in the case of—

"(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

"(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(2) AMENDMENT TO ERISA.—Paragraph (3) of section 302(c) of ERISA (29 U.S.C. 1082(c)(3)) is amended to read as follows:

"(3) For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) in the case of—

"(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

"(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(c) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS TO CERTAIN PLANS NOT LESS THAN UNFUNDED CURRENT LIABILITY.—Paragraph (1) of section 404(a) of the 1986 Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(l) (without regard to any reduction by the credit balance in the funding standard account). For purposes of this subparagraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(c))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account."

(d) LIMITATION ON AMORTIZATION OF PAST SERVICE CREDITS.—Clause (iii) of section 404(a)(1)(A) of the 1986 Code (relating to pension trusts) is amended by striking out "to amortize such credits"

and inserting in lieu thereof "to amortize the unfunded costs attributable to such credits".

(e) LIMITATION ON INTEREST RATE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (5) of section 412(b) of the 1986 Code (relating to interest) is amended to read as follows:

"(5) INTEREST.—

"(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(B) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 412(l) for any plan year—

"(i) IN GENERAL.—If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 10 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under subclause (I).

"(iii) ASSUMPTIONS.—Notwithstanding subsection (c)(3)(A)(i), for purposes of this section and for purposes of determining current liability, the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.".

(2) AMENDMENT TO ERISA.—Paragraph (5) of section 302(b) of ERISA (relating to interest) (29 U.S.C. 1082(b)(5)) is amended to read as follows:

"(5) INTEREST.—For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 412(l) for any plan year—

"(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(B) REQUIRED CHANGE OF INTEREST RATE.—

"(i) IN GENERAL.—If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 10 percent above, and not more than 10 percent below, the average rate of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under subclause (I).

"(iii) ASSUMPTIONS.—Notwithstanding subsection (c)(3)(A)(i), for purposes of this section and for purposes of determining current liability, the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1987.

Subpart B—Plan Terminations

SEC. 9311. LIMITATIONS ON EMPLOYER REVERSIONS UPON PLAN TERMINATION.

(a) RESTRICTIONS ON REVERSIONS PURSUANT TO RECENTLY AMENDED PLANS.—

(1) IN GENERAL.—Section 4044(d) of ERISA (29 U.S.C. 1344(d)) is amended—

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

(B) by inserting after paragraph (1) the following new paragraph:

"(2)(A) In determining the extent to which a plan provides for the distribution of plan assets to the employer for purposes of paragraph

(1)(C), any such provision, and any amendment increasing the amount which may be distributed to the employer, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment.

"(B) A distribution to the employer from a plan shall not be treated as failing to satisfy the requirements of this paragraph if the plan has been in effect for fewer than 5 years and the plan has provided for such a distribution since the effective date of the plan.

"(C) Except as otherwise provided in regulations of the Secretary of the Treasury, in any case in which a transaction described in section 208 occurs, subparagraph (A) shall continue to apply separately with respect to the amount of any assets transferred in such transaction.

"(D) For purposes of this subsection, the term 'employer' includes any member of the controlled group of which the employer is a member. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986."

(2) TRANSITIONAL RULE.—The amendments made by paragraph (1) shall apply, in the case of plans which, as of December 17, 1987, have no provision relating to the distribution of plan assets to the employer for purposes of section 4044(d)(1)(C) of the Employee Retirement Income Security Act of 1974, only with respect to plan amendments providing for the distribution of plan assets to the employer which are adopted after 1 year after the effective date of such amendments made by paragraph (1). Such amendment shall not apply to any provision of the plan adopted on or before December 17, 1987, which provides for the distribution of plan assets to the employer.

(b) DISTRIBUTION OF ASSETS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—Section 4044(d) of ERISA (29 U.S.C. 1344(d)) is amended—

(1) in paragraph (1), by striking "Any" and inserting "Subject to paragraph (3), any"; and

(2) by striking paragraph (3) (as redesignated by subsection (c)(1)) and inserting the following new paragraph:

"(3)(A) Before any distribution from a plan pursuant to paragraph (1), if any assets of the plan attributable to employee contributions remain after satisfaction of all liabilities described in subsection (a), such remaining assets shall be equitably distributed to the participants who made such contributions or their beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)).

"(B) For purposes of subparagraph (A), the portion of the remaining assets which are attributable to employee contributions shall be an amount equal to the product derived by multiplying—

"(i) the market value of the total remaining assets, by

"(ii) a fraction—

"(I) the numerator of which is the present value of all portions of the accrued benefits with respect to participants which are derived from participants' mandatory contributions (referred to in subsection (a)(2)), and

"(II) the denominator of which is the present value of all benefits with respect to which assets are allocated under paragraphs (2) through (6) of subsection (a).

"(C) For purposes of this paragraph, each person who is, as of the termination date—

"(i) a participant under the plan, or

"(ii) an individual who has received, during the 3-year period ending with the termination date, a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution in accordance with section 203(e) or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit,

shall be treated as a participant with respect to the termination, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to participants' mandatory contributions (referred to in subsection (a)(2))."

(c) TECHNICAL AMENDMENT.—Section 4044(b)(4) of ERISA (29 U.S.C. 1344(b)(4)) is amended by striking "section 401(a), 403(a), or 405(a)" and inserting "section 401(a) or 403(a)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) plan terminations under section 4041(c) of ERISA with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

(2) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA after December 17, 1987.

SEC. 9312. ELIMINATION OF SECTION 4049 TRUST; INCREASE IN LIABILITY TO PENSION BENEFIT GUARANTY CORPORATION AND IN PAYMENTS BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES.

(a) REPEAL.—Section 4049 of ERISA (29 U.S.C. 1349) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) ELIMINATION OF EMPLOYER LIABILITY TO SECTION 4049 TRUST.—

(A) REPEAL.—Subsection (c) of section 4062 of ERISA (29 U.S.C. 1362(c)) is repealed.

(B) CONFORMING AMENDMENTS.—Section 4062 of ERISA is further amended by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(2) INCREASE IN EMPLOYER LIABILITY TO THE CORPORATION.—

(A) IN GENERAL.—Subparagraph (A) of section 4062(b)(1) of ERISA (29 U.S.C. 1362(b)(1)(A)) is amended to read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) shall be the total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation."

(B) LIEN LIMITED TO 30 PERCENT OF NET WORTH.—

(i) Subsection (a) of section 4068 of ERISA (29 U.S.C. 1368(a)) is amended by striking out "to the extent of an amount equal to the unpaid amount described in section 4062(b)(1)(A)(i)" each place it appears and inserting in lieu thereof "to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 4062(a)".

(ii) Title IV of ERISA (29 U.S.C. 4001 et seq.) is amended by transferring subsection (e) of section 4062 of ERISA (29 U.S.C. 1362(e)) to the end of section 4068 of ERISA (29 U.S.C. 1368) and by redesignating such subsection as subsection (f).

(C) TREATMENT OF MULTIPLE CONTROLLED GROUPS.—

(i) IN GENERAL.—So much of section 4064(b) of ERISA (29 U.S.C. 1364(b)) as precedes the second sentence is amended to read as follows:

"(b) The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 4062, except that the amount of liability determined under section 4062(b)(1) with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by a fraction—

"(1) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

"(2) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and clauses (i)(II) and (ii) of section 4062(b)(1)(A) shall be applied separately with respect to each controlled group."

(ii) CONFORMING AMENDMENTS.—Section 4068(a) of ERISA (29 U.S.C. 1368(a)) is amended by adding at the end thereof the following new sentence: "The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 4064(d) relating to treatment of multiple controlled groups."

(3) PAYMENT BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES OF RECOVERY PERCENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LIABILITIES.—

(A) IN GENERAL.—Section 4022 of ERISA (29 U.S.C. 1322) is amended—

(i) by redesignating subsections (c) and (d) as subsections (d) and (e); and

(ii) by inserting after subsection (b) the following new subsection:

"(c)(1) In addition to benefits paid under the preceding provisions of this section with respect to a terminated plan, the corporation shall pay the portion of the amount determined under paragraph (2) which is allocated with respect to each participant under section 4044(a), to such participant or (in the case of a deceased participant) to such participant's beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)).

"(2) The amount determined under this paragraph is an amount equal to the product derived by multiplying—

"(A) the outstanding amount of benefit liabilities under the plan (including interest calculated from the termination date), by

"(B) the applicable recovery ratio.

"(3)(A) Except as provided in subparagraph (C), for purposes of this subsection, the term 'recovery ratio' means the average ratio, with respect to prior plan terminations described in subparagraph (B), of—

"(i) the value of the recovery of the corporation under section 4062, 4063, or 4064 in connection with such prior terminations, to

"(ii) the amount of unfunded benefit liabilities under such plans as of the termination date in connection with such prior terminations.

"(B) A plan termination described in this subparagraph is a termination with respect to which—

"(i) the corporation has determined the value of recoveries under section 4062, 4063, or 4064, and

"(ii) notices of intent to terminate were provided after December 17, 1987.

"(C) In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds $20,000,000, for purposes of this section, the term 'recovery ratio' means, with respect to the termination of such plan, the ratio of—

"(i) the value of the recoveries of the corporation under section 4062, 4063, or 4064 in connection with such plan, to

"(ii) the amount of unfunded benefit liabilities under such plan as of the termination date.

"(4) Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable."

(B) TRANSITIONAL RULE.—

(i) IN GENERAL.—In the case of any plan termination to which the amendments made by this section apply and with respect to which notices of intent to terminate were provided on or before December 17, 1990—

(I) subparagraph (A) of section 4022(c)(1) of ERISA (as amended by this paragraph) shall not apply, and

(II) subparagraph (B) of section 4022(c)(1) of ERISA (as so amended) shall apply irrespective of the outstanding amount of benefit liabilities under the plan.

(ii) LIMITATION.—Clause (i) shall not apply in the case of any plan termination referred to in clause (i) with respect to which the recovery ratio is not finally determined under section 4022(c)(1)(B) of ERISA (as so amended) as of December 17, 1990.

(4) BENEFIT LIABILITIES.—Paragraph (16) of section 4001(a) of ERISA (29 U.S.C. 1301(a)(16)) is amended to read as follows:

"(16) 'benefit liabilities' means the benefits of employees and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Internal Revenue Code of 1986);".

(5) OUTSTANDING AMOUNT OF BENEFIT LIABILITIES.—Paragraph (19) of section 4001(a) of ERISA (29 U.S.C. 1301(a)(19)) is amended to read as follows:

"(19) 'outstanding amount of benefit liabilities' means, with respect to any plan, the excess (if any) of—

"(A) the value of the benefit liabilities under the plan (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the value of the benefit liabilities which would be so determined by only taking into account benefits which are guaranteed under section 4022 or to which assets of the plan are allocated under section 4044;".

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 4041(c)(3)(B)(ii) of ERISA (29 U.S.C. 1341(c)(3)(B)(ii)) is amended—

(A) by striking subclause (II);

(B) by striking "plan, and" at the end of subclause (I) and inserting "plan."; and

(C) by striking "available to it—" and all that follows through "the plan administrator" and inserting "available to it, the plan administrator".

(2) Section 4041(c)(3)(B)(iii) of ERISA (29 U.S.C. 1341(c)(3)(B)(iii)) is amended—

(A) by striking subclause (II);

(B) by striking "section 4042, and" at the end of subclause (I) and inserting "section 4042."; and

(C) by striking "available to it—" and all that follows through "the corporation" in subclause (I) and inserting "available to it, the corporation".

(3) Subsection (i) of section 4042 of ERISA (29 U.S.C. 1342(i)) is repealed.

(4) Section 4005(g) of ERISA (29 U.S.C. 1305(g)) is amended by striking out "or fiduciaries with respect to trusts to which the requirements of section 4049 apply".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to—

(A) plan terminations under section 4041(c) of ERISA with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

(B) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA after December 17, 1987.

(2) SECTION 4049 ADMINISTRATIVE EXPENSES UNDER PRIOR TERMINATIONS.—Section 4049(a) of ERISA (as effective under paragraph (1)), is amended by adding at the end thereof the following new sentence: "Reasonable administrative expenses incurred in carrying out the responsibilities under this section prior to the receipt of any liability payments under section 4062(c) shall

be paid by the persons described in section 4062(a) in accordance with procedures which shall be prescribed by the corporation by regulation, and the amount of the liability determined under section 4062(c) shall be reduced by the amount of such expenses so paid."

SEC. 9313. STANDARDS FOR TERMINATION.

(a) STANDARD TERMINATION PROCEDURES AVAILABLE ONLY WHEN ASSETS SUFFICIENT TO MEET BENEFIT LIABILITIES.—

(1) IN GENERAL.—Subparagraph (D) of section 4041(b)(1) of ERISA (29 U.S.C. 1341(b)(1)(D)) is amended to read as follows:

"(D) when the final distribution of assets occurs, the plan is sufficient for benefit liabilities (determined as of the termination date)."

(2) TECHNICAL AMENDMENTS.—

(A) Paragraphs (2)(A), (2)(C), (2)(D), and (3) of section 4041(b) of ERISA (29 U.S.C. 1341(b)(2)(A), (2)(C), (2)(D), (3)) are each amended by striking out "benefit commitments" each place it appears and inserting in lieu thereof "benefit liabilities".

(B) Subparagraph (B) of section 4041(b)(2) of ERISA (29 U.S.C. 1341(b)(2)(B)) is amended—

(i) by striking out "the amount of such person's benefit commitments (if any)" and inserting in lieu thereof "the amount of the benefit liabilities (if any) attributable to such person"; and

(ii) by striking out "such benefit commitments" and inserting in lieu thereof "such benefit liabilities".

(C)(i) Subparagraph (A) of section 4041(b)(3) of ERISA (29 U.S.C. 1341(b)(3)(A)) is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) purchase irrevocable commitments from an insurer to provide all benefit liabilities under the plan, or

"(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefit liabilities under the plan."

(ii) Subparagraph (B) of section 4041(b)(3) of ERISA (29 U.S.C. 1341(b)(3)) is amended by striking out "so as to pay" and all that follows and inserting in lieu thereof "so as to pay all benefit liabilities under the plan".

(D) Paragraphs (2) and (3) of section 4041(c) of ERISA (29 U.S.C. 1341(c)(2), (3)) are each amended by striking out "benefit commitments" each place it appears (including in any heading) and inserting in lieu thereof "benefit liabilities".

(E) Paragraph (1) of section 4041(d) of ERISA (29 U.S.C. 1341(d)) is amended—

(i) by striking out "no amount of unfunded benefit commitments" and inserting in lieu thereof "no amount of unfunded benefit liabilities", and

(ii) by striking out "BENEFIT COMMITMENTS" in the paragraph heading and inserting in lieu thereof "BENEFIT LIABILITIES".

(F) Paragraph (18) of section 4001(a) of ERISA (29 U.S.C. 1301(a)(18)) is amended to read as follows:

"(18) 'amount of unfunded benefit liabilities' means, as of any date, the excess (if any) of—

"(A) the value of the benefit liabilities under the plan (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the current value (as of such date) of the assets of the plan;".

(b) CRITERIA FOR DISTRESS TERMINATION.—

(1) APPLICABILITY TO ALL MEMBERS OF CONTROLLED GROUP.—Section 4041(c)(2) of ERISA (29 U.S.C. 1341(c)(2)) is amended—

(A) in subparagraph (B), by striking "a substantial member" in the matter preceding clause (i) and inserting "a member"; and

(B) by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(2) REQUIREMENT OF ADDITIONAL FINDINGS TO QUALIFY FOR DISTRESS TERMINATION BASED ON REORGANIZATION IN BANKRUPTCY.—Section 4041(c)(2)(B)(ii)(III) of ERISA (29 U.S.C. 1341(c)(2)(B)(ii)(III)) is amended by striking "approves the termination" and inserting "determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination".

(3) CLARIFICATION OF DATE AS OF WHICH EMPLOYER MUST BE IN A BANKRUPTCY PROCEEDING TO QUALIFY FOR DISTRESS TERMINATION.—Clauses (i) and (ii) of section 4041(c)(2)(B) of ERISA (29 U.S.C. 1341(c)(2)(B) (i) and (ii)) are each amended by inserting "proposed" before "termination date".

(4) TREATMENT UNDER DISTRESS TESTS OF CASES CONVERTED TO LIQUIDATION.—Section 4041(c)(2)(B)(i)(I) of ERISA (29 U.S.C. 1341(c)(2)(B)(i)(I)) is amended by inserting before the comma at the end the following: "(or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought)".

(5) NOTICE TO CORPORATION UNDER REORGANIZATION DISTRESS TEST.—Section 4041(c)(2)(B)(ii) of ERISA (29 U.S.C. 1341(c)(2)(B)(ii)) is amended—

(A) in subclause (II), by striking "and" at the end;

(B) by redesignating subclause (III) as subclause (IV);

(C) by inserting after subclause (II) the following new subclause:

"(III) such person timely submits to the corporation any request for the approval of the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) of the plan termination, and";

and

(D) in subclause (IV) (as redesignated), by striking "(or other" and all that follows through "subdivision)" and inserting "(or such other appropriate court)".

(6) ARRANGEMENTS FOR PAYMENT OF LIABILITY BY CONTROLLED GROUPS.—Section 4067 of ERISA (29 U.S.C. 1367) is amended by striking "controlled groups who are" and inserting "controlled groups who are or may become".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan terminations under section 4041 of ERISA with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987.

SEC. 9314. ADDITIONAL AMENDMENTS RELATING TO PLAN TERMINATION.

(a) CERTAIN INFORMATION NOT REQUIRED FROM CERTAIN INSURANCE CONTRACT PLANS.—

(1) STANDARD TERMINATION.—Section 4041(b)(2)(A) of ERISA (29 U.S.C. 1341(b)(2)(A)) is amended—

(A) by striking clause (iii) and inserting the following:

"(iii) certification by the plan administrator that—

"(I) the information on which the enrolled actuary based the certification under clause (i) is accurate and complete, and

"(II) the information provided to the corporation under clause (ii) is accurate and complete."; and

(B) by adding at the end thereof the following:

"Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of the Internal Revenue Code of 1986.".

(2) DISTRESS TERMINATION.—Section 4041(c)(2)(A) of ERISA (29 U.S.C. 1341(c)(2)(A)) is amended—

(A) by striking clause (iv) and inserting the following:

"(iv) certification by the plan administrator that—

"(I) the information on which the enrolled actuary based the certifications under clause (ii) is accurate and complete, and

"(II) the information provided to the corporation under clauses (i) and (iii) is accurate and complete."; and

(B) by adding at the end the following:

"Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of the Internal Revenue Code of 1986.".

(b) CLARIFICATION OF EXISTING AUTHORITY TO POOL ASSETS OF TERMINATED PLANS.—Section 4042 of ERISA (29 U.S.C. 1342(a)) is amended by striking the third sentence and inserting the following: "Notwithstanding any other provision of this title, the corporation is authorized to pool assets of terminated plans for purposes of administration, investment, payment of liabilities of all such terminated plans, and such other purposes as it determines to be appropriate in the administration of this title.".

(b) SUBMISSION OF PLAN DATA IN INVOLUNTARY TERMINATION.—Section 4042(c) of ERISA (29 U.S.C. 1342(c)) is amended by adding at the end the following new paragraph:

"(3) In the case of a proceeding initiated under this section, the plan administrator shall provide the corporation, upon the request of the corporation, the information described in clauses (ii), (iii), and (iv) of section 4041(c)(2)(A).".

(c) CIVIL PENALTIES FOR FAILURE TO TIMELY PROVIDE REQUIRED INFORMATION RELATING TO SINGLE-EMPLOYER PLANS.—

(1) IN GENERAL.—Subtitle D of ERISA (29 U.S.C. 1361 et seq.) is amended by adding at the end the following new section:

"PENALTY FOR FAILURE TO TIMELY PROVIDE REQUIRED INFORMATION

"SEC. 4071. The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other material information required under this subtitle or subtitle A, B, or C, or any regulations prescribed under any such subtitle, within the applicable time limit specified therein. Such penalty shall not exceed $1,000 for each day for which such failure continues."

(2) CLERICAL AMENDMENTS.—The table of contents in section 1 of ERISA (29 U.S.C. 1001 note) is amended by adding after the item relating to section 4070 the following new item:

"Sec. 4071. Penalty for failure to timely provide required information.".

Subpart C—Increase in Premium Rates

SEC. 9331. INCREASE IN PREMIUM RATES.

(a) GENERAL RULE.—Clause (i) of section 4006(a)(3)(A) of ERISA (29 U.S.C. 1306(a)(3)(A)) is amended by striking out "for plan years beginning after December 31, 1985, an amount equal to $8.50" and inserting in lieu thereof "for plan years beginning after December 31, 1987, an amount equal to the sum of $16 plus the additional premium (if any) determined under subparagraph (E)".

(b) DETERMINATION OF ADDITIONAL PREMIUM.—Paragraph (3) of section 4006(a) of ERISA (29 U.S.C. 1306(a)(3)) is amended by adding at the end thereof the following new subparagraph:

"(E)(i) The additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

"(ii) The amount determined under this clause for any plan year shall be an amount equal to $6.00 for each $1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the close of the preceding plan year.

"(iii) For purposes of clause (ii)—

"(I) Except as provided in subclause (II), the term 'unfunded vested benefits' means the amount which would be the unfunded current liability (within the meaning of section 302(d)(8)(A)) if only vested benefits were taken into account.

"(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to 80 percent of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

"(iv)(I) Except as provided in this clause, the aggregate increase in the premium payable with respect to any participant by reason of this subparagraph shall not exceed $34.

"(II) If an employer made contributions to a plan during 1 or more of the 5 plan years preceding the 1st plan year to which this subparagraph applies in an amount not less than the maximum

amount allowable as a deduction with respect to such contributions under section 404 of such Code, the dollar amount in effect under subclause (I) for the 1st 5 plan years to which this subparagraph applies shall be reduced by $3 for each plan year for which such contributions were made in such amount.

(c) LIABILITY FOR PREMIUM.—

(1) IN GENERAL.—Section 4007 of ERISA (29 U.S.C. 1307) is amended by striking out "plan administrator" each place it appears and inserting in lieu thereof "designated payor".

(2) DESIGNATED PAYOR.—Section 4007 of ERISA (29 U.S.C. 1307) is amended by adding at the end thereof the following new subsection:

"(e)(1) For purposes of this section, the term 'designated payor' means—

"(A) the contributing sponsor or plan administrator in the case of a single-employer plan, and

"(B) the plan administrator in the case of a multiemployer plan.

"(2) If the contributing sponsor of any single-employer plan is a member of a controlled group, each member of such group shall be jointly and severally liable for any premiums required to be paid by such contributing sponsor. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(d) DEPOSIT OF PREMIUMS INTO SEPARATE REVOLVING FUND.—Section 4005 of ERISA (relating to establishment of Pension Benefit Guaranty funds) (29 U.S.C. 1305) is amended by redesignating subsections (f) and (g) as subsections (g) and (h) and by inserting after subsection (e) the following new subsection:

"(f)(1) A seventh fund shall be established and credited with—

"(A) premiums, penalties, and interest charges collected under section 4006(a)(3)(A)(i) (not described in subparagraph (B)) to the extent attributable to the amount of the premium in excess of $8.50,

"(B) premiums, penalties, and interest charges collected under section 4006(a)(3)(E), and

"(C) earnings on investments of the fund or on assets credited to the fund.

"(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

"(A) administrative costs of the corporation, or

"(B) benefits under any plan which was terminated before October 1, 1988,

unless no other amounts are available for such payment.

"(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate."

(e) CONFORMING AMENDMENTS.—Section 4006(c)(1)(A) of ERISA (29 U.S.C. 1306(c)(1)(A)) is amended by striking out "and" at the end of clause (i), by inserting "and before January 1, 1986," after "after December 31, 1977,", and by adding at the end thereof the following new clause:

"(iii) with respect to each plan year beginning after December 31, 1985, and before January 1, 1988, an amount equal to $8.50 for each individual who was a participant in such plan during the plan year, and".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

(2) SEPARATE ACCOUNTING.—The amendments made by subsection (d) shall apply to fiscal years beginning after September 30, 1988.

Subpart D—Miscellaneous Provisions

SEC. 9341. SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.

(a) AMENDMENTS TO 1986 CODE—Subsection (a) of section 401 of the 1986 Code (relating to requirements for qualification) is amended by inserting after paragraph (28) the following new paragraph:—

"(29) SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.—

"(A) IN GENERAL.—If—

"(i) a defined benefit plan (other than a multiemployer plan) adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

"(ii) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the trust of which such plan is a part shall not constitute a qualified trust under this subsection unless such amendment does not take effect until the contributing sponsor (or any member of the controlled group of the contributing sponsor) provides security to the plan.

"(B) FORM OF SECURITY.—The security required under subparagraph (A) shall consist of—

"(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

"(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

"(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

"(C) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—

"(i) the lesser of—

"(I) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 60 percent, including the amount of the unfunded current li-

ability under the plan attributable to the plan amendment, or

"(II) the amount of the increase in current liability under the plan attributable to the plan amendment, over

"(ii) $10,000,000.

"(D) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

"(E) DEFINITIONS.—For purposes of this paragraph, the terms 'current liability', 'funded current liability percentage', and 'unfunded current liability' shall have the meanings given such terms by section 412(l), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year."

(b) AMENDMENTS TO ERISA.—Part 3 of subtitle B of title I of ERISA (29 U.S.C. 1081 et seq.) is amended—

(1) by redesignating section 307 as section 308; and

(2) by inserting after section 306 the following new section:

"SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING

"SEC. 307. (a) IN GENERAL.—If—

"(1) a defined benefit plan (other than a multiemployer plan) adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

"(2) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the contributing sponsor (or any member of the controlled group of the contributing sponsor) shall provide security to the plan.

"(b) FORM OF SECURITY.—The security required under subsection (a) shall consist of—

"(1) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412,

"(2) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

"(3) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

"(c) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—

"(1) the lesser of—

"(A) the amount of additional plan assets which would be necessary to increase the funded current liability percent-

age under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or

"(B) the amount of the increase in current liability under the plan attributable to the plan amendment, over

"(2) $10,000,000.

"(d) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

"(e) DEFINITIONS.—For purposes of this section, the terms 'current liability', 'funded current liability percentage', and 'unfunded current liability' shall have the meanings given such terms by section 302(d), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year."

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of ERISA (29 U.S.C. 1001 note) is amended by striking out the item relating to section 307 and inserting in lieu thereof the following new items:

"Sec. 307. Security required upon adoption of plan amendment resulting in significant underfunding.
"Sec. 308. Effective dates."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to plan amendments adopted after the date of the enactment of this Act.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan amendments adopted pursuant to collective bargaining agreements ratified before the date of enactment.

SEC. 9342. REPORTING REQUIREMENTS.

(a) FUNDED PERCENTAGE REQUIRED TO BE SHOWN IN ANNUAL REPORT.—

(1) Subsection (d) of section 103 of ERISA (29 U.S.C. 1023(d)) is amended by redesignating paragraphs (11) and (12) as paragraphs (12) and (13), respectively, and by inserting after paragraph (10) the following new paragraph:

"(11) If the current value of the assets of the plan is less than 60 percent of the current liability under the plan (within the meaning of section 302(d)(7)), such percentage."

(2) Paragraph (3) of section 104(b) of ERISA (29 U.S.C. 1024(b)(3)) is amended by striking out "such other material" and inserting in lieu thereof "such other material (including the percentage determined under section 103(d)(11))".

(b) AMENDMENT OF STATUTE OF LIMITATIONS WITH RESPECT TO CERTAIN REPORTS.—Section 413(a)(2) of ERISA (29 U.S.C. 1113(a)(2))

is amended by striking "(A)" and by striking "or (B)" and all that follows through "title".

(c) PENALTY FOR FAILURE TO PROVIDE ANNUAL REPORT IN COMPLETE FORM.—Section 502(c) of ERISA (29 U.S.C. 1132(c)) is amended—

(1) by inserting "(1)" after "(c)", and by striking "(1) who" and "(2) who" and inserting "(A) who" and "(B) who", respectively; and

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

"(2) The Secretary may assess a civil penalty of up to $1,000 a day from the date of a plan administrator's failure or refusal to file the annual report required to be filed with the Secretary under section 101(b)(4). For purposes of this paragraph, an annual report that has been rejected under section 104(a)(4) for failure to provide material information shall not be treated as having been filed with the Secretary.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to reports required to be filed after December 31, 1987.

(2) REGULATIONS.—The Secretary of Labor shall issue the regulations required to carry out the amendments made by subsection (c) not later than January 1, 1989.

SEC. 9343. COORDINATION OF PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 WITH PROVISIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

(a) INTERPRETATION OF INTERNAL REVENUE CODE.—Except to the extent specifically provided in the Internal Revenue Code of 1986 or as determined by the Secretary of the Treasury, titles I and IV of the Employee Retirement Income Security Act of 1974 are not applicable in interpreting such Code.

(b) CLARIFICATION REGARDING EFFECT OF DETERMINATION LETTER BY THE INTERNAL REVENUE SERVICE ON ENFORCEMENT BY THE DEPARTMENT OF LABOR OF FIDUCIARY STANDARDS UNDER ERISA.—Section 3001(d) of ERISA (29 U.S.C. 1201(d)) is amended by adding after the second sentence the following: "The determination of the Secretary of the Treasury shall not be prima facie evidence on issues relating solely to part 4 of subtitle B of title I.".

(c) CLARIFICATION REGARDING RETURNS OF CONTRIBUTIONS UPON RECEIPT OF ADVERSE DETERMINATION LETTERS.—

(1) IN GENERAL.—Subparagraph (B) of section 403(c)(2) of ERISA (29 U.S.C. 1103(c)(2)(B)) is amended to read as follows:

"(B) If a contribution is conditioned on initial qualification of the plan under section 401 or 403(a) of the Internal Revenue Code of 1986, and if the plan receives an adverse determination with respect to its initial qualification, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after such determination, but only if the application for the determination is made by the time prescribed by law for filing the employer's return for the taxable year in which such plan was adopted, or such later date as the Secretary of the Treasury may prescribe.".

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 403(c) of ERISA (29 U.S.C. 1103(c)(3)) is amended by striking out

"4972(b) of the Internal Revenue Code of 1954" and inserting in lieu thereof "4979(c) of the Internal Revenue Code of 1986".

SEC. 9344. CLARIFICATION REGARDING THE IMPOSITION OF AN ANNUAL SANCTION FOR PROHIBITED TRANSACTIONS WHICH ARE CONTINUING IN NATURE.

Section 502(i) of ERISA (29 U.S.C. 1132(i)) is amended by striking the second sentence and inserting the following: "The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations which shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved.".

SEC. 9345. ADDITIONAL LIMITATIONS ON INVESTMENT BY AN INDIVIDUAL ACCOUNT PLAN FORMING PART OF A FLOOR-OFFSET ARRANGEMENT AND ON INVESTMENT BY AN INDIVIDUAL ACCOUNT PLAN IN EMPLOYER STOCK.

(a) TREATMENT OF INDIVIDUAL ACCOUNT PORTIONS OF FLOOR-OFFSET ARRANGEMENTS.—

(1) IN GENERAL.—Section 407(d)(3) of ERISA (29 U.S.C. 1107(d)(3)) is amended by adding at the end the following new subparagraph:

"(C) The term 'eligible individual account plan' does not include any individual account plan the benefits of which are taken into account in determining the benefits payable to a participant under any defined benefit plan."

(2) TREATMENT OF FLOOR-OFFSET ARRANGEMENT AS SINGLE PLAN.—Section 407(d) of ERISA (29 U.S.C. 1107(d)) is amended by adding at the end the following new paragraph:

"(9) For purposes of this section, an arrangement which consists of a defined benefit plan and an individual account plan shall be treated as 1 plan if the benefits of such arrangement are taken into account in determining the benefits payable under such defined benefit plan."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to arrangements established after December 17, 1987.

(b) RESTRICTIONS ON TREATMENT OF STOCK AS QUALIFYING EMPLOYER SECURITY.—Section 407 of ERISA (29 U.S.C. 1107) is amended—

(1) in subsection (d)(5), by adding at the end the following new sentence: "After December 17, 1987, in the case of a plan other than an eligible individual account plan, stock shall be considered a qualifying employer security only if such stock satisfies the requirements of subsection (f)(1)."; and

(2) by adding at the end the following new subsection:

"(f)(1) Stock satisfies the requirements of this subsection if—

"(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and

"(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

"(2) Until January 1, 1993, a plan shall not be treated as violating subsection (a) solely by holding stock which fails to satisfy the requirements of paragraph (1) if such stock—

"(A) has been so held since December 17, 1987, or

"(B) was acquired after December 17, 1987, pursuant to a legally binding contract in effect on December 17, 1987, and has been so held at all times after the acquisition.

"(3) After December 17, 1987, no plan may acquire stock which does not satisfy the requirements of paragraph (1) unless the acquisition is made pursuant to a legally binding contract in effect on such date.".

SEC. 9346. INTEREST RATE ON ACCUMULATED CONTRIBUTIONS.

(a) AMENDMENTS TO ERISA.—Section 204(c)(2) of ERISA (29 U.S.C. 1054(c)(2)) is amended—

(1) in subparagraph (C)(iii), by striking "5 percent per annum" and inserting "120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of a plan year)"; and

(2) in subparagraph (D)—

(A) in the first sentence, by striking ", the rate of interest described in clause (iii) of subparagraph (C), or both,"; and

(B) by striking the second sentence.

(b) AMENDMENTS TO 1986 CODE.—Section 411(c)(2) of the 1986 Code (relating to accrued benefit derived from employee contributions) is amended—

(1) in subparagraph (C)(iii), by striking "5 percent per annum" and inserting "120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year)"; and

(2) in subparagraph (D)—

(A) in the first sentence, by striking ", the rate of interest described in clause (iii) of subparagraph (C), or both,"; and

(B) by striking the second sentence.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989.—If any amendment made by this section requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(A) during the period after such amendments made by this section take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments or in accordance with an amendment prescribed by the Secretary of the Treasury and adopted by the plan, and

(B) such plan amendment applies retroactively to the period after such amendments take effect and such first plan year.

A plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accord-

ance with the provisions of the plan, merely because it operates in accordance with this subsection.

Subtitle E—Miscellaneous Provisions

SEC. 9401. RESTORATION OF TRUST FUNDS FOR 1987.

(a) IN GENERAL.—

(1) OBLIGATIONS ISSUED.—Except as provided in subsection (b), within 30 days after the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall issue to each Federal fund obligations under chapter 31 of title 31, United States Code, which bear such issue dates, interest rates, and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of such Federal fund will replicate to the maximum extent practicable the obligations that would have been held by such Federal fund if any—

(A) failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of section 3101(b) of title 31, United States Code, had not occurred, and

(B) issuance of such obligations had occurred immediately on the expiration of the debt issuance suspension period.

(2) INTEREST CREDITED.—On the first normal interest payment date or within 30 days after the expiration of any debt issuance suspension period (whichever is later) to which this section applies, the Secretary of the Treasury shall credit to each Federal fund an amount determined by the Secretary, after taking into account the actions taken pursuant to paragraph (1), to be equal to the income lost by such Federal fund by reason of any failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of such section 3101(b), including any income lost between the expiration of the debt issuance suspension period and the date of the credit.

(b) INTEREST ON MARKET-BASED OBLIGATIONS.—With respect to any Federal fund which invests in market-based special obligations, on the expiration of a debt issuance suspension period to which this section applies, the Secretary of the Treasury shall immediately credit to such fund an amount equal to the interest that would have been earned by such fund during the debt issuance suspension period if the daily balance in such fund that the Secretary was unable to invest by reason of the limitation of such section 3101(b) had been invested each day during such period, overnight, in obligations under chapter 31 of title 31, United States Code, earning interest at a rate determined by the Secretary in accordance with the standard practice of the Department of the Treasury.

(c) INTEREST ON STATE AND LOCAL GOVERNMENT SERIES.—On the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall (as of the close of such period) credit to each holder of any obligation which is part of the State and Local Government Series and which is in the nature of a demand deposit an amount equal to the income lost by such

holder by reason of not being able to reinvest the principal of, and interest on, such obligation during such period.

(d) DEBT ISSUANCE SUSPENSION PERIODS TO WHICH SECTION APPLIES.—This section shall apply to debt issuance suspension periods beginning on or after July 18, 1987, and ending before January 1, 1988.

(e) CREDITED AMOUNTS TREATED AS INTEREST.—All amounts credited under this section shall be treated as interest on obligations issued under chapter 31 of title 31, United States Code, for all purposes of Federal law.

(f) DEFINITIONS.—For purposes of this section—

(1) DEBT ISSUANCE SUSPENSION PERIOD.—The term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to conduct the orderly financial operations of the United States may not be made without exceeding the limitation imposed by section 3101(b) of title 31, United States Code.

(2) FEDERAL FUND.—The term "Federal fund" means any Federal trust fund or Government account established pursuant to Federal law to which the Secretary of the Treasury has issued or is expressly authorized by law directly to issue obligations under chapter 31 of title 31, United States Code, in respect of public money, money otherwise required to be deposited in the Treasury, or amounts appropriated; except that such term shall not include the Civil Service Retirement and Disability Fund or the Thrift Savings Fund of the Federal Employees' Retirement System.

(g) SPECIAL RULES.—In the case of any debt suspension period beginning on or after July 18, 1987, and ending before the date of the enactment of this Act—

(1) for purposes of determining the date on which the Secretary of the Treasury is required to take the actions described in subsections (a), (b), and (c), such period shall be treated as having ended on such date of enactment, and

(2) the amount required to be credited under subsection (c) shall include any income lost because the credit was not made upon the expiration of such period.

SEC. 9402. 6-MONTH EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NON-TAX DEBTS OWED TO FEDERAL AGENCIES.

(a) GENERAL RULE.—Subsection (c) of section 2653 of the Deficit Reduction Act of 1984 is amended by striking out "January 1, 1988" and inserting in lieu thereof "July 1, 1988".

(b) CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF PROVISION.—

(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection.

(c) STUDY BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States, in consultation with the Secretary of the Treasury or his delegate, shall conduct a study of the operation and effectiveness of the amendments made by section 2653 of the Deficit Reduction Act of 1984. The study shall compile and evaluate information on the effect of those amendments on voluntary compliance with the income tax laws. Not later than April 1, 1989, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of the study conducted under this subsection, together with such recommendations as he may deem advisable.

SEC. 9403. INCREASE IN LIMIT ON LONG-TERM BONDS.

The last sentence of section 3102(a) of title 31, United States Code, is amended by striking out "$250,000,000,000" and inserting in lieu thereof "$270,000,000,000".

Subtitle F—Customs User Fees; Trade and Customs Agency Authorizations

SEC. 9501. CUSTOMS USER FEES.

(a) AMENDMENTS TO CUSTOMS USER FEES PROGRAM.—Section 13031 of the Consolidated Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended as follows:

(1) MERCHANDISE PROCESSING FEE IMPOSED ON FOREIGN CONTENT OF CERTAIN SCHEDULE 8 ARTICLES.—

(A) Subsection (a)(9)(A) is amended to read as follows:

"(A) provided for under any item in schedule 8 of the Tariff Schedules of the United States except item 806.30 or 807.00,".

(B) Subsection (b)(8)(A) is amended—

(i) by striking out "and" at the end of clause (i);

(ii) by striking out the period at the end of clause (ii) and inserting a semicolon; and

(iii) by adding at the end thereof the following:

"(iii) in the case of merchandise classified under item 806.30 of the Tariff Schedules of the United States, be applied to the value of the foreign repairs or alterations to the merchandise; and

"(iv) in the case of merchandise classified under item 807.00 of such Schedules, be applied to the full value of the merchandise, less the cost or value of the component United States products.

With respect to merchandise that is classified under item 806.30 or 807.00 of such Schedules and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a) (9) or (10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.".

(2) PROVISION OF CUSTOMS SERVICES.—Subsection (e) is amended—

(A) by redesignating paragraph (4) as paragraph (6);

(B) by inserting after paragraph (3) the following new paragraphs:

"(4) Notwithstanding any other provision of law, all customs services (including, but not limited to, normal and overtime clearance and preclearance services) shall be adequately provided, when requested, for—

"(A) the clearance of any commercial vessel, vehicle, or aircraft or its passengers, crew, stores, material, or cargo arriving, departing, or transiting the United States;

"(B) the preclearance at any customs facility outside the United States of any commercial vessel, vehicle or aircraft or its passengers, crew, stores, material, or cargo; and

"(C) the inspection or release of commercial cargo or other commercial shipments being entered into, or withdrawn from, the customs territory of the United States.

"(5) For purposes of this subsection, customs services shall be treated as being 'adequately provided' if such of those services that are necessary to meet the needs of parties subject to customs inspection are provided in a timely manner taking into account factors such as—

"(A) the unavoidability of weather, mechanical, and other delays;

"(B) the necessity for prompt and efficient passenger and baggage clearance;

"(C) the perishability of cargo;

"(D) the desirability or unavoidability of late night and early morning arrivals from various time zones;

"(E) the availability (in accordance with regulations prescribed under subsection (g)(2)) of customs personnel and resources; and

"(F) the need for specific enforcement checks."; and

(C) by amending paragraph (6) (as redesignated by subparagraph (A)) to read as follows:

"(6) Notwithstanding any other provision of law except paragraph (2), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

"(A) for any—

"(i) cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or

"(ii) customs personnel provided,

in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States;

"(B) for any preclearance or other customs activity, expense, or service performed, and any customs personnel provided, outside the United States in connection with the departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, for the United States; or

"(C) in connection with—

"(i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly know as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.), or

"(ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).".

(3) DISPOSITION OF FEES.—Subsection (f) is amended by striking out paragraphs (1), (2), and (3) and inserting the following:

"(f) DISPOSITION OF FEES.—(1) There is established in the general fund of the Treasury a separate account which shall be known as the 'Customs User Fee Account'. Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees collected under subsection (a) except that portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations.

"(2) All funds in the Customs User Fee Account shall be available, to the extent provided for in appropriations Acts, to pay the costs (other than costs for which direct reimbursement under paragraph (3) is required) incurred by the United States Customs Service in conducting commercial operations, including, but not limited to, all costs associated with commercial passenger, vessel, vehicle, aircraft, and cargo processing. So long as there is a surplus of funds in the Customs User Fee Account, the Secretary of the Treasury may not reduce personnel staffing levels for providing commercial clearance and preclearance services.

"(3) The Secretary of the Treasury, in accordance with such section 524 and without regard to apportionment or any other administrative practice or limitation, shall directly reimburse, from the fees collected under subsection (a), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary in providing—

"(A) inspectional overtime services; and

"(B) all preclearance services;

for which the recipients of such services are not required to reimburse the Secretary of the Treasury. Reimbursement under this paragraph shall apply with respect to each fiscal year occurring after September 30, 1987, and shall be made at least quarterly. To the extent necessary, reimbursement of appropriations under this paragraph may be made on the basis of estimates made by the Secretary of the Treasury of the costs for inspectional overtime and preclearance services, and adjustments shall be made in subsequent reimbursements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed.".

(4) REGULATIONS.—Subsection (g) is amended—

(A) by striking out "(g) REGULATIONS.—The" and inserting "(g) REGULATIONS.—(1) In addition to the regulations required under paragraph (2), the "; and

(B) by inserting at the end thereof the following new paragraph:

"(2) The Secretary of the Treasury shall prescribe regulations governing the work shifts of customs personnel at airports. Such regula-

tions shall provide, among such other factors considered appropriate by the Secretary, that—

"(A) the work shifts will be adjusted, as necessary, to meet cyclical and seasonal demands and to minimize the use of overtime;

"(B) the work shifts will not be arbitrarily reduced or compressed; and

"(C) consultation with the Advisory Committee on Commercial Operations of the United States Customs Service (established under section 9501(c) of the Omnibus Budget Reconciliation Act of 1987) will be carried out before adjustments are made in the work shifts.".

(5) EXTENSION OF CUSTOMS USER FEES PROGRAM.—Subsection (j)(3) is amended by striking out "1989" and inserting "1990".

(b) ADDITIONAL PERIOD TO CLAIM CERTAIN REFUNDS.—Section 1893(g)(2) of the Tax Reform Act of 1986 is amended by striking out "90 days after the date of enactment of this Act" and inserting "90 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987".

(c) ANALYSIS REGARDING THE CES PROGRAM; EFFECT ON IMPLEMENTATION OF PROGRAM.—

(1) The Comptroller General of the United States shall conduct a comprehensive analysis, including a cost-benefit study, of the centralized cargo examination station (CES) concept from the perspective of both the United States Customs Service and business community users. The analysis shall be submitted on the same day to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (hereinafter in this subsection referred to as the "Committees") not later than March 30, 1988, and shall include recommendations as to how best to implement cargo inspection procedures.

(2) The United States Customs Service—

(A) may not, after the date of the enactment of this Act, establish any new centralized cargo examination station at any ocean port, airport, or land border location unless the Customs Service provides to the Committees advance notice, in writing, of not less than 90 days regarding the proposed establishment; and

(B) shall, on such date of enactment, suspend operations at each centralized cargo examination station that was operating at an airport on the day before such date until the 90th day after a date—

(i) that is not earlier than the date on which the analysis required under paragraph (1) is submitted to the Committees, and

(ii) on which the Customs Service provides to the Committees notice, in writing, that it intends to resume such operations at the station.

During the period of suspension of operations under subparagraph (B) at any centralized cargo examination station at an airport, the Secretary of the Treasury shall maintain customs operations and staffing at that airport at a level not less than

that which was in effect immediately before the suspension took effect.

(d) EFFECTIVE DATES.—

(1) Except as otherwise provided in this subsection, the provisions of this section take effect on the date of the enactment of this Act.

(2) The amendments made by subsection (a)(1) apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.

(3) The amendment made by subsection (a)(3) shall take effect on October 1, 1987.

SEC. 9502. UNITED STATES INTERNATIONAL TRADE COMMISSION AUTHORIZATIONS.

Section 330(e)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended—

(1) by striking out "1986" and inserting "1988"; and

(2) by striking out "$28,901,000;" and inserting "$35,386,000;".

SEC. 9503. UNITED STATES CUSTOMS SERVICE AUTHORIZATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended to read as follows:

"(b) AUTHORIZATION OF APPROPRIATIONS.—

"(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year 1988 not to exceed $348,192,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations, of which $171,857.06 shall be available only for concluding Contract TC-82-54 that was awarded for the development and testing of an automatic license plate reader.

"(2) FOR COMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year 1988 not to exceed $615,000,000 from the Customs User Fee Account for the salaries and expenses of the United States Customs Service that are incurred in commercial operations.

"(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for fiscal year 1988 not to exceed $118,309,000 for the operation (including salaries and expenses) and maintenance of the air interdiction program of the United States Customs Service.".

(b) CONGRESSIONAL NOTICE OF CERTAIN ACTIONS.—Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) is amended—

(1) by striking out "USE OF SAVINGS RESULTING FROM ADMINISTRATIVE CONSOLIDATIONS.—" in subsection (f);

(2) by striking out "ALLOCATION OF RESOURCES.—" in subsection (g) and inserting "(1)"; and

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

"(2) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days prior to taking any action which would—

"(A) result in any significant reduction in force of employees other than by means of attrition;

"(B) result in any significant reduction in hours of operation or services rendered at any office of the United States Customs Service or any port of entry;

"(C) eliminate or relocate any office of the United States Customs Service;

"(D) eliminate any port of entry; or

"(E) significantly reduce the number of employees assigned to any office of the United States Customs Service or any port of entry.".

(c) ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE UNITED STATES CUSTOMS SERVICE.—

(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the "Advisory Committee on Commercial Operations of the United States Customs Service" (hereafter in this subsection referred to as the "Advisory Committee").

(2)(A) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

(3) The Advisory Committee shall—

(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

(B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

(i) describe the operations of the Advisory Committee during the preceding year, and

(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

(4) The Assistant Secretary of the Treasury for Enforcement shall preside over meetings of the Advisory Committee.

(d) DISSOLUTION OF EXISTING ADVISORY COMMITTEE.—Section 13033 of the Consolidated Budget Reconciliation Act of 1985 is repealed.

SEC. 9504. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE AUTHORIZATIONS.

Section 141(f)(1) of the Trade Act of 1974 (19 U.S.C. 2171(f)(1)) is amended to read as follows:

"(f)(1)(A) There are authorized to be appropriated for fiscal year 1988 to the Office for the purposes of carrying out its functions not to exceed $15,172,000.

"(B) Of the amounts authorized to be appropriated under subparagraph (A) for fiscal year 1988—

"(i) not to exceed $69,000 may be used for entertainment and representation expenses of the Office; and

"(ii) not to exceed $1,000,000 shall remain available until expended.".

TITLE X—REVENUE PROVISIONS

SEC. 10000. SHORT TITLE; AMENDMENT OF THE 1986 CODE.

(a) SHORT TITLE.—This title may be cited as the "Revenue Act of 1987".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) COORDINATION WITH SECTION 15.—No amendment made by this title shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) TABLE OF CONTENTS.—

Subtitle A—Individual Income Tax Provisions

SEC. 10101. EXPENSES OF OVERNIGHT CAMPS NOT ALLOWABLE FOR DEPENDENT CARE CREDIT.

(a) GENERAL RULE.—Subparagraph (A) of section 21(b)(2) (defining employment-related expenses) is amended by adding at the end thereof the following new sentence:

"Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses paid in taxable years beginning after December 31, 1987.

SEC. 10102. CHANGES TO DEDUCTION FOR QUALIFIED RESIDENCE INTEREST.

(a) GENERAL RULE.—Paragraph (3) of section 163(h) (defining qualified residence interest) is amended to read as follows:

"(3) QUALIFIED RESIDENCE INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified residence interest' means any interest which is paid or accrued during the taxable year on—

"(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

"(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

"(B) ACQUISITION INDEBTEDNESS.—

"(i) IN GENERAL.—The term 'acquisition indebtedness' means any indebtedness which—

"(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

"(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the

amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

"(ii) $1,000,000 LIMITATION.—The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

"(C) HOME EQUITY INDEBTEDNESS.—

"(i) IN GENERAL.—The term 'home equity indebtedness' means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

"(I) the fair market value of such qualified residence, reduced by

"(II) the amount of acquisition indebtedness with respect to such residence.

"(ii) LIMITATION.—The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

"(D) TREATMENT OF INDEBTEDNESS INCURRED ON OR BEFORE OCTOBER 13, 1987.—

"(i) IN GENERAL.—In the case of any pre-October 13, 1987, indebtedness—

"(I) such indebtedness shall be treated as acquisition indebtedness, and

"(II) the limitation of subparagraph (B)(ii) shall not apply.

"(ii) REDUCTION IN $1,000,000 LIMITATION.—The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

"(iii) PRE-OCTOBER 13, 1987, INDEBTEDNESS.—The term 'pre-October 13, 1987, indebtedness' means—

"(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

"(II) any indebtedness which is secured by the qualified residence and was incurred after October 13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

"(iv) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (iii) shall not apply to any indebtedness after—

"(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

"(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing)."

(b) CONFORMING AMENDMENTS.—Subsection (h) of section 163 is amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 10103. CLARIFICATION OF TREATMENT OF FEDERAL JUDGES.

(a) GENERAL RULE.—A Federal judge—

(1) shall be treated as an active participant for purposes of section 219(g) of the Internal Revenue Code of 1986, and

(2) shall be treated as an employee for purposes of chapter 1 of such Code.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10104. TREATMENT OF REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR.

(a) 1-YEAR DELAY IN TREATMENT OF PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR.—

(1) GENERAL RULE.—Section 67(c) of the Internal Revenue Code of 1986 to the extent it relates to indirect deductions through a publicly offered regulated investment company shall apply only to taxable years beginning after December 31, 1987.

(2) PUBLICLY OFFERED REGULATED INVESTMENT COMPANY DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "publicly offered regulated investment company" means a regulated investment company the shares of which are—

(i) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(ii) regularly traded on an established securities market, or

(iii) held by or for no fewer than 500 persons at all times during the taxable year.

(B) SECRETARY MAY REDUCE 500 PERSON REQUIREMENT.—The Secretary of the Treasury or his delegate may by regulation decrease the minimum shareholder requirement of subparagraph (A)(iii) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares.

(b) CHANGES IN DISTRIBUTION REQUIREMENTS.—

(1) INCREASE IN REQUIRED DISTRIBUTION OF INCOME.—Paragraph (1) of section 4982(b) (defining required distribution) is amended by striking out "90 percent" in subparagraph (B) and inserting in lieu thereof "98 percent".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 651 of the Tax Reform Act of 1986.

Subtitle B—Business Provisions

PART I—ACCOUNTING PROVISIONS

SEC. 10201. REPEAL OF RESERVE FOR ACCRUAL OF VACATION PAY.

(a) GENERAL RULE.—Section 463 (relating to accrual of vacation pay) is hereby repealed.

(b) TECHNICAL AMENDMENTS.—

(1) Section 81 is hereby repealed.

(2) Subparagraph (B) of section 404(b)(2) is amended to read as follows:

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e))."

(3) Section 404(a)(5) is amended by adding at the end thereof the following new sentence: "For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee."

(4) Paragraph (2) of section 419(e) is amended by inserting "or" at the end of subparagraph (B), by striking out ", or" at the end of subparagraph (C), and inserting in lieu thereof a period, and by striking out subparagraph (D).

(5) Paragraph (5) of section 461(h) is amended to read as follows:

"(5) SUBSECTION NOT TO APPLY TO CERTAIN ITEMS.—This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses."

(6) The table of sections for part II of subchapter B of chapter 1 is amended by striking out the item relating to section 81.

(7) The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 463.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who elected to have section 463 of the Internal Revenue Code of 1986 apply for such taxpayer's last taxable year beginning before January 1, 1988, and who is required to change his method of accounting by reason of the amendments made by this section—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary, and

(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

(ii) shall be taken into account over the 4-taxable year period beginning with the taxable year following such last taxable year as follows:

In the case of the:	*The percentage taken into account is:*
1st year	*25*
2nd year	*5*
3rd year	*35*
4th year	*35.*

Notwithstanding subparagraph (C)(ii), if the period the adjustments are required to be taken into account under section 481 of such Code is less than 4 years, such adjustments shall be taken into account ratably over such shorter period.

SEC. 10202. PROVISIONS RELATING TO INSTALLMENT SALES.

(a) REPEAL OF PROPORTIONATE DISALLOWANCE OF INSTALLMENT METHOD.—

(1) IN GENERAL.—Section 453C (relating to certain indebtedness treated as payment on installment obligations) is hereby repealed.

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 453C.

(b) REPEAL OF INSTALLMENT METHOD FOR DEALERS IN PROPERTY.—

(1) IN GENERAL.—Subparagraph (A) of section 453(b)(2) (defining installment sale) is amended to read as follows:

"(A) DEALER DISPOSITIONS.—Any dealer disposition (as defined in subsection (l))."

(2) DEALER DISPOSITION DEFINED.—Section 453 (relating to installment method) is amended by adding at the end thereof the following new subsection:

"(l) DEALER DISPOSITIONS.—For purposes of subsection (b)(2)(A)—

"(1) IN GENERAL.—The term 'dealer disposition' means any of the following dispositions:

"(A) PERSONAL PROPERTY.—Any disposition of personal property by a person who regularly sells or otherwise disposes of personal property on the installment plan.

"(B) REAL PROPERTY.—Any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

"(2) EXCEPTIONS.—The term 'dealer disposition' does not include—

"(A) FARM PROPERTY.—The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

"(B) TIMESHARES AND RESIDENTIAL LOTS.—

"(i) IN GENERAL.—Any dispositions described in clause (ii) on the installment plan if the taxpayer elects to have paragraph (3) apply to any installment obliga-

tions which arise from such dispositions. An election under this paragraph shall not apply with respect to an installment obligation which is guaranteed by any person other than an individual.

"(ii) DISPOSITIONS TO WHICH SUBPARAGRAPH APPLIES.—A disposition is described in this clause if it is a disposition in the ordinary course of the taxpayer's trade or business to an individual of—

"(I) a timeshare right to use or a timeshare ownership interest in residential real property for not more than 6 weeks per year, or a right to use specified campgrounds for recreational purposes, or

"(II) any residential lot, but only if the taxpayer (or any related person) is not to make any improvements with respect to such lot.

For purposes of subclause (I), a timeshare right to use (or timeshare ownership interest in) property held by the spouse, children, grandchildren, or parents of an individual shall be treated as held by such individual.

"(C) CARRYING CHARGES OR INTEREST.—Any carrying charges or interest with respect to a disposition described in subparagraph (A) or (B) which are added on the books of account of the seller to the established cash selling price of the property shall be included in the total contract price of the property and, if such charges or interest are not so included, any payments received shall be treated as applying first against such carrying charges or interest.

"(3) PAYMENT OF INTEREST ON TIMESHARES AND RESIDENTIAL LOTS.—

"(A) IN GENERAL.—In the case of any installment obligation to which paragraph (2)(B) applies, the tax imposed by this chapter for any taxable year for which payment is received on such obligation shall be increased by the amount of interest determined in the manner provided under subparagraph (B).

"(B) COMPUTATION OF INTEREST.—

"(i) IN GENERAL.—The amount of interest referred to in subparagraph (A) for any taxable year shall be determined—

"(I) on the amount of the tax for such taxable year which is attributable to the payments received during such taxable year on installment obligations to which this subsection applies,

"(II) for the period beginning on the date of sale, and ending on the date such payment is received, and

"(III) by using the applicable Federal rate under section 1274 (without regard to subsection (d)(2) thereof) in effect at the time of the sale compounded semiannually.

"(ii) INTEREST NOT TAKEN INTO ACCOUNT.—For purposes of clause (i), the portion of any tax attributable to the receipt of any payment shall be determined without regard to any interest imposed under subparagraph (A).

"(iii) TAXABLE YEAR OF SALE.—No interest shall be determined for any payment received in the taxable year of the disposition from which the installment obligation arises.

"(C) TREATMENT AS INTEREST.—Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year."

(c) TREATMENT OF INSTALLMENT OBLIGATIONS OF NONDEALERS.—Section 453A (relating to installment method for dealers in personal property) is amended to read as follows:

"SEC. 453A. SPECIAL RULES FOR NONDEALERS OF REAL PROPERTY.

"(a) GENERAL RULE.—In the case of an installment obligation to which this section applies—

"(1) interest shall be paid on the deferred tax liability with respect to such obligation in the manner provided under subsection (c), and

"(2) the pledging rules under subsection (d) shall apply.

"(b) INSTALLMENT OBLIGATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to any obligation which arises from the disposition of real property under the installment method which is property used in the taxpayer's trade or business or property held for the production of rental income, but only if the sales price of such property exceeds $150,000.

"(2) SPECIAL RULE FOR INTEREST PAYMENTS.—For purposes of subsection (a)(1), this section shall apply to an obligation described in paragraph (1) arising during a taxable year only if—

"(A) such obligation is outstanding as of the close of such taxable year, and

"(B) the face amount of all obligations of the taxpayer described in paragraph (1) which arose during, and are outstanding as of the close of, such taxable year exceeds $5,000,000.

Except as provided in regulations, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as one person for purposes of this paragraph.

"(3) EXCEPTION FOR PERSONAL USE AND FARM PROPERTY.—An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

"(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

"(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

"(4) SPECIAL RULE FOR TIMESHARES AND RESIDENTIAL LOTS.—An installment obligation shall not be treated as described in paragraph (1) if it arises from a disposition described in section 453(l)(2)(B), but the provisions of section 453(l)(3) (relating to interest payments on timeshares and residential lots) shall apply to such obligation.

"(5) SALES PRICE.—For purposes of paragraph (1), all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

"(c) INTEREST ON DEFERRED TAX LIABILITY.—

"(1) IN GENERAL.—If an obligation to which this section applies is outstanding as of the close of any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined in the manner provided under paragraph (2).

"(2) COMPUTATION OF INTEREST.—For purposes of paragraph (1), the interest for any taxable year shall be an amount equal to the product of—

"(A) the applicable percentage of the deferred tax liability with respect to such obligation, multiplied by

"(B) the underpayment rate in effect under section 6621(a)(2) for the month with or within which the taxable year ends.

"(3) DEFERRED TAX LIABILITY.—For purposes of this section, the term 'deferred tax liability' means, with respect to any taxable year, the product of—

"(A) the amount of gain with respect to an obligation which has not been recognized as of the close of such taxable year, multiplied by

"(B) the maximum rate of tax in effect under section 1 or 11, whichever is appropriate, for such taxable year.

"(4) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means, with respect to obligations arising in any taxable year, the percentage determined by dividing—

"(A) the portion of the aggregate face amount of such obligations outstanding as of the close of such taxable year in excess of $5,000,000, by

"(B) the aggregate face amount of such obligations outstanding as of the close of such taxable year.

"(5) REGULATIONS—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection including regulations providing for the application of this subsection in the case of contingent payments, short taxable years, and pass-thru entities.

"(d) PLEDGES, ETC., OF INSTALLMENT OBLIGATIONS.—

"(1) IN GENERAL.—For purposes of section 453, if any indebtedness (hereinafter in this subsection referred to as 'secured indebtedness') is secured by an installment obligation to which this section applies, the net proceeds of the secured indebtedness shall be treated as a payment received on such installment obligation as of the later of—

"(A) the time the indebtedness becomes secured indebtedness, or

"(B) the proceeds of such indebtedness are received by the taxpayer.

"(2) LIMITATION BASED ON TOTAL CONTRACT PRICE.—The amount treated as received under paragraph (1) by reason of any secured indebtedness shall not exceed the excess (if any) of—

"(A) the total contract price, over

"(B) any portion of the total contract price received under the contract before such secured indebtedness was incurred (including amounts previously treated as received under paragraph (1) but not including amounts not taken into account by reason of paragraph (3)).

"(3) LATER PAYMENTS TREATED AS RECEIPT OF TAX PAID AMOUNTS.—If any amount is treated as received under paragraph (1) with respect to any installment obligation, subsequent payments received on such obligation shall not be taken into account for purposes of section 453 to the extent that the aggregate of such subsequent payments does not exceed the aggregate amount treated as received under paragraph (1).

"(4) SECURED INDEBTEDNESS.—For purposes of this subsection indebtedness is secured by an installment obligation to the extent that payment of principal or interest on such indebtedness is directly secured (under the terms of the indebtedness or any underlying arrangements) by any interest in such installment obligation."

(2) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 453A and inserting in lieu thereof the following new item:

"Sec. 453A. Special rules for nondealers of real property."

(3) CONFORMING AMENDMENTS.—Sections 381(c)(8) and 691(a)(4) and (5) are each amended by striking out "or 453A" each place it appears.

(d) MINIMUM TAX.—Paragraph (6) of section 56(a) (relating to installment sales of certain property) is amended to read as follows:

"(6) INSTALLMENT SALES OF CERTAIN PROPERTY.—In the case of any disposition after March 1, 1986, of any property described in section 1221(1), income from such disposition shall be determined without regard to the installment method under section 453. This paragraph shall not apply to any disposition with respect to which an election is in effect under section 453(l)(2)(B)."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to dispositions in taxable years beginning after December 31, 1987.

(2) SPECIAL RULES FOR DEALERS.—

(A) IN GENERAL.—In the case of dealer dispositions (within the meaning of section 453A of the Internal Revenue Code of 1986), the amendments made by subsections (a) and (b) shall apply to installment obligations arising from dispositions after December 31, 1987.

(B) SPECIAL RULES FOR OBLIGATIONS ARISING FROM DEALER DISPOSITIONS AFTER FEBRUARY 28, 1986, AND BEFORE JANUARY 1, 1988.—

(i) IN GENERAL.—In the case of an applicable installment obligation arising from a disposition described in subclause (I) or (II) of section 453C(e)(1)(A)(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) before January 1,

1988, the amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 1987.

(ii) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by clause (i) to change its method of accounting for any taxable year with respect to obligations described in clause (i)—

(I) such change shall be treated as initiated by the taxpayer,

(II) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(III) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

(3) SPECIAL RULE FOR NONDEALERS.—

(A) ELECTION.—A taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by subsections (a) and (c) apply to taxable years ending after December 31, 1986, with respect to dispositions and pledges occurring after August 16, 1986.

(B) PLEDGING RULES.—Except as provided in subparagraph (A)—

(i) IN GENERAL.—Section 453A(d) of the Internal Revenue Code of 1986 shall apply to any installment obligation which is pledged to secure any secured indebtedness (within the meaning of section 453A(d)(4) of such Code) after December 17, 1987, in taxable years ending after such date.

(ii) COORDINATION WITH SECTION 453C.—For purposes of section 453C of such Code (as in effect before its repeal), the face amount of any obligation to which section 453A(d) of such Code applies shall be reduced by the amount treated as payments on such obligation under section 453A(d) of such Code and the amount of any indebtedness secured by it shall not be taken into account.

(4) MINIMUM TAX.—The amendment made by subsection (d) shall apply to dispositions in taxable years beginning after December 31, 1986.8

(5) COORDINATION WITH TAX REFORM ACT OF 1986.—The amendments made by this section shall not apply to any installment obligation or to any taxpayer during any period to the extent the amendments made by section 811 of the Tax Reform Act of 1986 do not apply to such obligation or during such period.

SEC. 10203. REDUCTION IN PERCENTAGE OF ITEMS TAKEN INTO ACCOUNT UNDER COMPLETED CONTRACT METHOD.

(a) IN GENERAL.—Section 460(a) (relating to percentage of completion—capitalized cost method) is amended—

(1) by striking out "40 percent" each place it appears in the text and heading thereof and inserting in lieu thereof "70 percent", and

(2) by striking out "60 percent" and inserting in lieu thereof "30 percent".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contracts entered into after October 13, 1987.

(2) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—

(A) IN GENERAL.—The amendments made by this section shall not apply in the case of a qualified ship contract.

(B) QUALIFIED SHIP CONTRACT.—For purposes of subparagraph (A), the term 'qualified ship contract' means any contract for the construction in the United States of not more than 5 ships if—

(i) such ships will not be constructed (directly or indirectly) for the Federal Government, and

(ii) the taxpayer reasonably expects to complete such contract within 5 years of the contract commencement date (as defined in section 460(g) of the Internal Revenue Code of 1986).

SEC. 10204. AMORTIZATION OF PAST SERVICE PENSION COSTS.

(a) IN GENERAL.—For purposes of sections 263A and 460 of the Internal Revenue Code of 1986, the allocable costs (within the meaning of section 263A(a)(2) or section 460(c) of such Code, whichever is applicable) with respect to any property shall include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) shall apply to costs incurred after December 31, 1987, in taxable years ending after such date.

(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

(A) IN GENERAL.—Subsection (a) shall apply to taxable years beginning after December 31, 1987.

(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by this section to change its method of accounting for any taxable year—

(i) such change shall be treated as initiated by the taxpayer,

(ii) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(iii) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

SEC. 10205. CERTAIN FARM CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.

(a) GENERAL RULE.—Section 447 (relating to method of accounting for corporations engaged in farming) is amended by striking out

subsections (c) and (e), by redesignating subsection (d) as subsection (e), and by inserting after subsection (b) the following new subsections:

"(c) EXCEPTION FOR CERTAIN CORPORATIONS.—For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

"(1) an S corporation, or

"(2) a corporation the gross receipts of which meet the requirements of subsection (d).

"(d) GROSS RECEIPTS REQUIREMENTS.—

"(1) IN GENERAL.—A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of the same controlled group of corporations (within the meaning of section 1563(a)) shall be treated as 1 corporation.

"(2) SPECIAL RULES FOR FAMILY CORPORATIONS.—

"(A) IN GENERAL.—In the case of a family corporation, paragraph (1) shall be applied—

"(i) by substituting 'December 31, 1985,' for 'December 31, 1975,'; and

"(ii) by substituting '$25,000,000' for '$1,000,000'.

"(B) GROSS RECEIPTS TEST.—

"(i) CONTROLLED GROUPS.—Notwithstanding the last sentence of paragraph (1), in the case of a family corporation—

"(I) except as provided by the Secretary, only the applicable percentage of gross receipts of any other member of any controlled group of corporations of which such corporation is a member shall be taken into account, and

"(II) under regulations, gross receipts of such corporation or of another member of such group shall not be taken into account by such corporation more than once.

"(ii) PASS-THRU ENTITIES.—For purposes of paragraph (1), if a family corporation holds directly or indirectly any interest in a partnership, estate, trust or other pass-thru entity, such corporation shall take into account its proportionate share of the gross receipts of such entity.

"(iii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the term 'applicable percentage' means the percentage equal to a fraction—

"(I) the numerator of which is the fair market value of the stock of another corporation held directly or indirectly as of the close of the taxable year by the family corporation, and

"(II) the denominator of which is the fair market value of all stock of such corporation as of such time.

For purposes of this clause, the term 'stock' does not include stock described in section 1563(c)(1).'

"(C) FAMILY CORPORATION.—For purposes of this section. the term 'family corporation' means—

"(i) any corporation if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of all other classes of stock of the corporation, are owned by members of the same family, and

"(ii) any corporation described in subsection (h)."

(b) SUSPENSE ACCOUNT IN LIEU OF 481 ADJUSTMENTS.—Section 447 is amended by adding at the end thereof the following new subsection:

"(i) SUSPENSE ACCOUNT FOR FAMILY CORPORATIONS.—

"(1) IN GENERAL.—If any family corporation is required by this section to change its method of accounting for any taxable year (hereinafter in this subsection referred to as the 'year of the change'), notwithstanding subsection (f), such corporation shall establish a suspense account under this subsection in lieu of taking into account adjustments under section 481(a) with respect to amounts included in the suspense account.

"(2) INITIAL OPENING BALANCE.—The initial opening balance of the account described in paragraph (1) shall be the lesser of—

"(A) the net adjustments which would have been required to be taken into account under section 481 but for this subsection, or

"(B) the amount of such net adjustments determined as of the beginning of the taxable year preceding the year of change.

If the amount referred to in subparagraph (A) exceeds the amount referred to in subparagraph (B), notwithstanding paragraph (1), such excess shall be included in gross income in the year of the change.

"(3) REDUCTION IN ACCOUNT IF FARMING BUSINESS CONTRACTS.—If—

"(A) the gross receipts of the corporation from the trade or business of farming for the year of the change or any subsequent taxable year, is less than

"(B) such gross receipts for the taxpayer's last taxable year beginning before the year of the change (or for the most recent taxable year for which a reduction in the suspense account was made under this paragraph),

the amount in the suspense account (after taking into account prior reductions) shall be reduced by the percentage by which the amount described in subparagraph (A) is less than the amount described in subparagraph (B).

"(4) INCOME INCLUSION.—Any reduction in the suspense account under paragraph (3) shall be included in gross income for the taxable year of the reduction.

"(5) INCLUSION WHERE CORPORATION CEASES TO BE A FAMILY CORPORATION.—

"(A) IN GENERAL.—If the corporation ceases to be a family corporation during any taxable year, the amount in

the suspense account (after taking into account prior reductions) shall be included in gross income for such taxable year.

"(B) SPECIAL RULE FOR CERTAIN TRANSFERS.—For purposes of subparagraph (A), any transfer in a corporation after December 15, 1987, shall be treated as a transfer to a person whose ownership could not qualify such corporation as a family corporation unless it is a transfer—

"(i) to a member of the family of the transferor, or

"(ii) in the case of a corporation described in subsection (h), to a member of a family which on December 15, 1987, held stock in such corporation which qualified the corporation under subsection (h).

"(6) SUBCHAPTER C TRANSACTIONS.—The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party by reason of subchapter C shall be determined under regulations prescribed by the Secretary."

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (e) of section 447 (as redesignated by subsection (a)) is amended by striking out "subsection (c)(2)" and inserting in lieu thereof "subsection (d)".

(2) Paragraph (1) of section 447(h) is amended—

(A) by striking out "This section shall not apply to any corporation" and inserting in lieu thereof "A corporation is described in this subsection",

(B) by striking out "subsection (d)" each place it appears and inserting in lieu thereof "subsection (e)", and

(C) by striking out "subsection (d)(1)" each place it appears and inserting in lieu thereof "subsection (e)(1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 10206. ENTITIES MAY ELECT TAXABLE YEARS OTHER THAN REQUIRED TAXABLE YEAR.

(a) ELECTION OF DIFFERENT YEAR.—

(1) IN GENERAL.—Part I of subchapter E of chapter 1 (relating to accounting periods) is amended by adding at the end thereof the following new section.

"SEC. 444. ELECTION OF TAXABLE YEAR OTHER THAN REQUIRED TAXABLE YEAR.

"(a) GENERAL RULE.—Except as provided in subsections (b) and (c), a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

"(b) LIMITATIONS ON TAXABLE YEARS WHICH MAY BE ELECTED.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than 3 months.

"(2) CHANGES IN TAXABLE YEAR.—Except as provided in paragraph (3), in the case of an entity changing a taxable year, an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than the shorter of—

"(A) 3 months, or

"(B) the deferral period of the taxable year which is being changed.

"(3) SPECIAL RULE FOR ENTITIES RETAINING 1986 TAXABLE YEARS.—In the case of an entity's 1st taxable year beginning after December 31, 1986, an entity may elect a taxable year under subsection (a) which is the same as the entity's last taxable year beginning in 1986.

"(4) DEFERRAL PERIOD.—For purposes of this subsection, the term 'deferral period' means, with respect to any taxable year of the entity, the months between—

"(A) the beginning of such year, and

"(B) the close of the 1st required taxable year ending within such year.

"(c) EFFECT OF ELECTION.—If an entity makes an election under subsection (a), then—

"(1) in the case of a partnership or S corporation, such entity shall make the payments required by section 7519, and

"(2) in the case of a personal service corporation, such corporation shall be subject to the deduction limitations of section 280H.

"(d) ELECTIONS.—

"(1) PERSON MAKING ELECTION.—An election under subsection (a) shall be made by the partnership, S corporation, or personal service corporation.

"(2) PERIOD OF ELECTION.—

"(A) IN GENERAL.—Any election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation changes its taxable year. Any change to a required taxable year may be made without the consent of the Secretary.

"(B) NO FURTHER ELECTION.—If an election is terminated under subparagraph (A), the partnership, S corporation, or personal service corporation may not make another election under subsection (a).

"(3) TIERED STRUCTURES, ETC.—No election may be made under subsection (a) with respect to an entity which is part of a tiered structure other than a tiered structure comprised of 1 or more partnerships or S corporations all of which have the same taxable year.

"(e) REQUIRED TAXABLE YEAR.—For purposes of this section, the term 'required taxable year' means the taxable year determined under section 706(b), 1378, or 441(i) without taking into account any taxable year which is allowable by reason of business purposes. Solely for purposes of the preceding sentence, sections 706(b), 1378, and 441(i) shall be treated as in effect for taxable years beginning before January 1, 1987.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of subsection (b)(2)(B) or (d)(2)(B) through the change in form of an entity."

(2) CONFORMING AMENDMENT.—The table of sections for part I of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 444. Election of taxable year other than required taxable year."

(b) REQUIRED PAYMENTS.—

(1) IN GENERAL.—Chapter 77 is amended by adding at the end thereof the following new section:

"SEC. 7519. REQUIRED PAYMENTS FOR ENTITIES ELECTING NOT TO HAVE REQUIRED TAXABLE YEAR.

"(a) GENERAL RULE.—This section applies to a partnership or S corporation for any taxable year, if—

"(1) an election under section 444 is in effect for the taxable year, and

"(2) the required payment determined under subsection (b) for such taxable year (or any preceding taxable year) exceeds $500.

"(b) REQUIRED PAYMENT.—For purposes of this section, the term 'required payment' means, with respect to any applicable election year of a partnership or S corporation, an amount equal to—

"(1) the excess of the product of—

"(A) the applicable percentage of the adjusted highest section 1 rate, multiplied by

"(B) the net base year income of the entity, over

"(2) the amount of the required payment for the preceding applicable election year.

For purposes of paragraph (1)(A), the term 'adjusted highest section 1 rate' means the highest rate of tax in effect under section 1 as of the end of the base year plus 1 percentage point (or, in the case of applicable election years beginning in 1987, 36 percent).

"(c) REFUND OF PAYMENTS.—If the amount determined under subsection (b)(2) exceeds the amount determined under subsection (b)(1), then the entity shall be entitled to a refund of such excess.

"(d) NET BASE YEAR INCOME.—For purposes of this section—

"(1) IN GENERAL.—An entity's net base year income shall be equal to the sum of—

"(A) the deferral ratio multiplied by the entity's net income for the base year, plus

"(B) the excess (if any) of—

"(i) the deferral ratio multiplied by the aggregate amount of applicable payments made by the entity during the base year, over

"(ii) the aggregate amount of such applicable payments made during the deferral period of the base year.

For purposes of this paragraph, the term 'deferral ratio' means the ratio which the number of months in the deferral period of the base year bears to the number of months in the partnership's or S corporation's taxable year.

"(2) NET INCOME.—Net income is determined by taking into account the aggregate amount of the following items—

"(A) PARTNERSHIPS.—In the case of a partnership, net income shall be the amount (not below zero) determined by taking into account the aggregate amount of the partnership's items described in section 702(a) (other than credits).

"(B) S CORPORATIONS.—In the case of an S corporation, net income shall be the amount (not below zero) determined by taking into account the aggregate amount of the S corporation's items described in section 1366(a) (other than credits). If the S corporation was a C corporation for the base

year, its taxable income for such year shall be treated as its net income for such year.

"(C) CERTAIN LIMITATIONS DISREGARDED.—For purposes of subparagraph (A) or (B), any limitation on the amount of any item described in either such paragraph which may be taken into account for purposes of computing the taxable income of a partner or shareholder shall be disregarded.

"(3) APPLICABLE PAYMENTS.—

"(A) IN GENERAL.—The term 'applicable payment' means amounts paid or incurred by a partnership or S corporation which are includible in gross income of a partner or shareholder.

"(B) EXCEPTIONS.—The term 'applicable payment' shall not include any—

"(i) gain from the sale or exchange of property between the partner or shareholder and the partnership or S corporation, and

"(ii) dividend paid by the S corporation.

"(4) APPLICABLE PERCENTAGE.—The applicable percentage is the percentage determined in accordance with the following table:

If the applicable election year of the partnership or S corporation begins during:	*The applicable percentage is:*
1987	*25*
1988	*50*
1989	*75*
1990 or thereafter	*100*

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) DEFERRAL PERIOD.—The term 'deferral period' has the meaning given to such term by section 444(b)(4).

"(2) YEARS.—

"(A) BASE YEAR.—The term 'base year' means, with respect to any applicable election year, the taxable year of the partnership or S corporation preceding such applicable election year.

"(B) APPLICABLE ELECTION YEAR.—The term 'applicable election year' means any taxable year of a partnership or S corporation with respect to which an election is in effect under section 444.

"(3) REQUIREMENT OF REPORTING.—Each partnership or S corporation which makes an election under section 444 shall include on any required return or statement such information as the Secretary shall prescribe as is necessary to carry out the provisions of this section.

"(f) ADMINISTRATIVE PROVISIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection or in regulations prescribed by the Secretary, any payment required by this section shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C.

"(2) DUE DATE.—The amount of any payment required by this section shall be paid on or before April 15 of the calendar year

following the calendar year in which the applicable election year begins (or such later date as may be prescribed by the Secretary).

"(3) INTEREST.—For purposes of determining interest, any payment required by this section shall be treated as a tax; except that no interest shall be allowed with respect to any refund of a payment made under this section.

"(4) PENALTIES.—

"(A) IN GENERAL.—In the case of any failure by any person to pay on the date prescribed therefor any amount required by this section, there shall be imposed on such person a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term 'underpayment' means the excess of the amount of the payment required under this section over the amount (if any) of such payment paid on or before the date prescribed therefor.

"(B) NEGLIGENCE AND FRAUD PENALTIES MADE APPLICABLE.—For purposes of section 6653, any payment required by this section shall be treated as a tax.

"(C) WILLFULL FAILURE.—If any partnership or S corporation willfully fails to comply with the requirements of this section, section 444 shall cease to apply with respect to such partnership or S corporation.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section and section 280H, including regulations for annualizing the income and applicable payments of an entity if the base year is a taxable year of less than 12 months."

(2) CONFORMING AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7519. Required payments for entities electing not to have required taxable year."

(c) DEDUCTION LIMITATIONS.—

(1) IN GENERAL.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280H. LIMITATION ON CERTAIN AMOUNTS PAID TO EMPLOYEE-OWNERS BY PERSONAL SERVICE CORPORATIONS ELECTING ALTERNATIVE TAXABLE YEARS.

"(a) GENERAL RULE.—If—

"(1) an election by a personal service corporation under section 444 is in effect for a taxable year, and

"(2) such corporation does not meet the minimum distribution requirements of subsection (c) for such taxable year,

then the deduction otherwise allowed under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the maximum deductible amount. The preceding sentence shall not apply for purposes of subchapter G (relating to personal holding companies).

"(b) CARRYOVER OF NONDEDUCTIBLE AMOUNTS.—If any amount is not allowed as a deduction for a taxable year under subsection (a), such amount shall be treated as paid or incurred in the succeeding taxable year.

"(c) MINIMUM DISTRIBUTION REQUIREMENT.—For purposes of this section—

"(1) IN GENERAL.—A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid or incurred during the deferral period of the taxable year (determined without regard to subsection (b)) equal or exceed the lesser of—

"(A) the product of—

"(i) the applicable amounts paid or incurred during the preceding taxable year, divided by the number of months in such taxable year, multiplied by

"(ii) the number of months in the deferral period of the preceding taxable year, or

"(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

"(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means the percentage (not in excess of 95 percent) determined by dividing—

"(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

"(B) the adjusted taxable income of such corporation for such 3 taxable years.

"(d) MAXIMUM DEDUCTIBLE AMOUNT.—For purposes of this section, the term 'maximum deductible amount' means the sum of—

"(1) the applicable amounts paid or incurred during the deferral period, plus

"(2) an amount equal to the product of—

"(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

"(B) the number of months in the nondeferral period.

"(e) DISALLOWANCE OF NET OPERATING LOSS CARRYBACKS.—No net operating loss carryback shall be allowed to (or from) any taxable year of a personal service corporation to which an election under section 444 applies.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE AMOUNT.—The term 'applicable amount' means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

"(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

"(B) any dividend paid by the corporation.

"(2) EMPLOYEE-OWNER.—The term 'employee-owner' has the meaning given such term by section 296A(b)(2).

"(3) NONDEFERRAL AND DEFERRAL PERIODS.—

"(A) DEFERRAL PERIOD.—The term 'deferral period' has the meaning given to such term by section 444(b)(4).

"(B) NONDEFERRAL PERIOD.—The term 'nondeferral period' means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period."

"(4) ADJUSTED TAXABLE INCOME.—The term 'adjusted taxable income' means taxable income increased by any amount paid or

incurred to an employee-owner which was includible in the gross income of such employee-owner."

(2) CLERICAL AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 is amended by adding at the end thereof the following item:

"Sec. 280H. Limitation on certain amounts paid to owner-employees by personal service corporations electing alternative taxable years."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) REQUIRED PAYMENTS.—The amendments made by subsection (b) shall apply to applicable election years beginning after December 31, 1986.

(3) ELECTIONS.—Any election under section 444 of the Internal Revenue Code of 1986 (as added by subsection (a)) for an entity's 1st taxable year beginning after December 31, 1986, shall not be required to be made before the 90th day after the date of the enactment of this Act.

(4) SPECIAL RULE FOR EXISTING ENTITIES ELECTING S CORPORATION STATUS.—If a C corporation (within the meaning of section 1361(a)(2)) of the Internal Revenue Code of 1986) with a taxable year other than the calendar year—

(A) made an election after September 18, 1986, and before January 1, 1988, under section 1362 of such Code to be treated as an S corporation, and

(B) elected to have the calendar year as the taxable year of the S corporation,

then section 444(b)(2)(B) of such Code shall be applied by taking into account the deferral period of the last taxable year of the C corporation rather than the deferral period of the taxable year being changed.

PART II—PARTNERSHIP PROVISIONS

SEC. 10211. CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS.

(a) GENERAL RULE.—Chapter 79 (relating to definitions) is amended by adding at the end thereof the following new section:

"SEC. 7704. CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS.

"(a) GENERAL RULE.—For purposes of this title, except as provided in subsection (c), a publicly traded partnership shall be treated as a corporation.

"(b) PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(1) interests in such partnership are traded on an established securities market, or

"(2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

"(c) EXCEPTION FOR PARTNERSHIPS WITH PASSIVE-TYPE INCOME.—

"(1) IN GENERAL.—Subsection (a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of paragraph (2) for such taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence.

"(2) GROSS INCOME REQUIREMENTS.—A partnership meets the gross income requirements of this paragraph for any taxable year if 90 percent or more of the gross income of such partnership for such taxable year consists of qualifying income.

"(3) EXCEPTION NOT TO APPLY TO CERTAIN PARTNERSHIPS WHICH COULD QUALIFY AS REGULATED INVESTMENT COMPANIES.—This subsection shall not apply to any partnership which would be described in section 851(a) if such partnership were a domestic corporation. To the extent provided in regulations, the preceding sentence shall not apply to any partnership a principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures, or forwards with respect to commodities.

"(d) QUALIFYING INCOME.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualifying income' means—

"(A) interest,

"(B) dividends,

"(C) real property rents,

"(D) gain from the sale or other disposition of real property (including property described in section 1221(1)),

"(E) income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber),

"(F) any gain from the sale or disposition of a capital asset (or property described in section 1231(b)) held for the production of income described in any of the foregoing subparagraphs of this paragraph, and

"(G) in the case of a partnership described in the second sentence of subsection (c)(3), income and gains from commodities (not described in section 1221(1)) or futures, forwards, and options with respect to commodities.

"(2) CERTAIN INTEREST NOT QUALIFIED.—Interest shall not be treated as qualifying income if—

"(A) such interest is derived in the conduct of a financial or insurance business, or

"(B) such interest would be excluded from the term 'interest' under section 856(f).

"(3) REAL PROPERTY RENT.—The term 'real property rent' means amounts which would qualify as rent from real property under section 856(d) if such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements).

"(4) CERTAIN INCOME QUALIFYING UNDER REGULATED INVESTMENT COMPANY OR REAL ESTATE TRUST PROVISIONS.—The term

'qualifying income' also includes any income which would qualify under section 851(b)(2) or 856(c)(2).

"(5) SPECIAL RULE FOR DETERMINING GROSS INCOME FROM CERTAIN REAL PROPERTY SALES.—In the case of the sale or other disposition of real property described in section 1221(1), gross income shall not be reduced by inventory costs.

"(e) INADVERTENT TERMINATIONS.—If—

"(1) a partnership fails to meet the gross income requirements of subsection (c)(2),

"(2) the Secretary determines that such failure was inadvertent,

"(3) no later than a reasonable time after the discovery of such failure, steps are taken so that such partnership once more meets such gross income requirements, and

"(4) such partnership agrees to make such adjustments (including adjustments with respect to the partners) as may be required by the Secretary with respect to such period,

then, notwithstanding such failure, such entity shall be treated as continuing to meet such gross income requirements for such period.

"(f) EFFECT OF BECOMING CORPORATION.—As of the 1st day that a partnership is treated as a corporation under this section, for purposes of this title, such partnership shall be treated as—

"(1) transferring all of its assets (subject to its liabilities) to a newly formed corporation in exchange for the stock of the corporation, and

"(2) distributing such stock to its partners in liquidation of their interests in the partnership."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 79 is amended by adding at the end thereof the following new item:

"Sec. 7704. Certain publicly traded partnerships treated as corporations."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply—

(A) except as provided in subparagraph (B), to taxable years beginning after December 31, 1987, or

(B) in the case of an existing partnership, to taxable years beginning after December 31, 1997.

(2) EXISTING PARTNERSHIP.—For purposes of this subsection—

(A) IN GENERAL.—The term "existing partnership" means any partnership if—

(i) such partnership was a publicly traded partnership on December 17, 1987,

(ii) a registration statement indicating that such partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to such partnership on or before such date, or

(iii) with respect to such partnership, an application was filed with a State regulatory commission on or before such date seeking permission to restructure a portion of a corporation as a publicly traded partnership.

(B) SPECIAL RULE WHERE SUBSTANTIAL NEW LINE OF BUSINESS ADDED AFTER DECEMBER 17, 1987.—A partnership which, but for this subparagraph, would be treated as an existing partnership shall cease to be treated as an existing partnership as of the 1st day after December 17, 1987, on which there has been an addition of a substantial new line of business with respect to such partnership.

SEC. 10212. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS UNDER SECTION 469.

(a) GENERAL RULE.—Section 469 (relating to passive activity losses and credits limited) is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

"(k) SEPARATE APPLICATION OF SECTION IN CASE OF PUBLICLY TRADED PARTNERSHIPS.—

"(1) IN GENERAL.—This section shall be applied separately with respect to items attributable to each publicly traded partnership (and subsection (i) shall not apply with respect to items attributable to any such partnership). The preceding sentence shall not apply to any credit determined under section 42, or any rehabilitation investment credit (within the meaning of section 48(o)), attributable to a publicly traded partnership to the extent the amount of any such credits exceeds the regular tax liability attributable to income from such partnership.

"(2) PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(A) interests in such partnership are traded on an established securities market, or

"(B) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof)."

(b) CONFORMING AMENDMENTS.—Paragraph (3) of section 58(b) and subparagraph (E) of section 163(d)(4) are each amended by striking out "469(l)" and inserting in lieu thereof "469(m)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986.

SEC. 10213. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS FOR UNRELATED BUSINESS TAX.

(a) GENERAL RULE.—Subsection (c) of section 512 (relating to special rules for partnerships) is amended to read as follows:

"(c) SPECIAL RULES FOR PARTNERSHIPS.—

"(1) IN GENERAL.—If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

"(2) SPECIAL RULE FOR PUBLICLY TRADED PARTNERSHIPS.—Notwithstanding any other provision of this section—

"(A) any organization's share (whether or not distributed) of the gross income of a publicly traded partnership (as defined in section 469(k)(2)) shall be treated as gross income derived from an unrelated trade or business, and

"(B) such organization's share of the partnership deductions shall be allowed in computing unrelated business taxable income.

"(3) SPECIAL RULE WHERE PARTNERSHIP YEAR IS DIFFERENT FROM ORGANIZATION'S YEAR.—If the taxable year of the organization is different from that of the partnership, the amounts to be included or deducted in computing the unrelated business taxable income under paragraph (1) or (2) shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to partnership interests acquired after December 17, 1987.

SEC. 10214. TREATMENT OF CERTAIN PARTNERSHIP ALLOCATIONS.

(a) GENERAL RULE.—Clause (vi) of section 514(c)(9)(B) is amended to read as follows:

"(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

"(I) all of the partners of the partnership are qualified organizations,

"(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(h)(6)), or

"(III) such partnership meets the requirements of subparagraph (E)."

(b) CERTAIN ALLOCATIONS PERMITTED.—Paragraph (9) of section 514(c) is amended by adding at the end thereof the following new subparagraph:

"(E) CERTAIN ALLOCATIONS PERMITTED.—

"(i) IN GENERAL.—A partnership meets the requirements of this subparagraph if—

"(I) the allocation of items to any partner other than a qualified organization cannot result in such partner having a share of the overall partnership loss for any taxable year greater than such partner's share of the overall partnership income for the taxable year for which such partner's income share will be the smallest,

"(II) the allocation of items to any partner which is a qualified organization cannot result in such partner having a share of the overall partnership income for any taxable year greater than such partner's share of the overall partnership loss for the taxable year for which such partner's loss share will be the smallest, and

"(III) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this clause, items allocated under section 704(c) shall not be taken into account.

"(ii) SPECIAL RULES.—

"(I) CHARGEBACKS.—Except as provided in regulations, a partnership may without violating the requirements of this subparagraph provide for chargebacks with respect to disproportionate losses previously allocated to qualified organizations and disproportionate income previously allocated to other partners. Any chargeback referred to in the preceding sentence shall not be at a ratio in excess of the ratio under which the loss or income (as the case may be) was allocated.

"(II) PREFERRED RATES OF RETURN, ETC.—To the extent provided in regulations, a partnership may without violating the requirements of this subparagraph provide for reasonable preferred returns or reasonable guaranteed payments."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) property acquired by the partnership after October 13, 1987, and

(2) partnership interests acquired after October 13, 1987,

except that such amendments shall not apply in the case of any property (or partnership interest) acquired pursuant to a written binding contract in effect on October 13, 1987, and at all times thereafter before such property (or interest) is acquired.

SEC. 10215. STUDY.

The Secretary of the Treasury or his delegate shall conduct a study of—

(1) the issue of treating publicly traded limited partnerships (and other partnerships which significantly resemble corporations) as corporations for Federal income tax purposes, including the issues of disincorporation and opportunities for avoidance of the corporate tax, and

(2) the administrative and compliance issues related to the tax treatment of publicly traded partnerships and other large partnerships.

Not later than January 1, 1989, the Secretary of the Treasury or his delegate shall submit a report on such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, together with such recommendations as he may deem appropriate. Not later than May 1, 1988, an interim report with respect to the issues referred to in paragraph (2) shall be submitted to such Committees.

PART III—CORPORATE PROVISIONS

SEC. 10221. REDUCTION IN DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM CORPORATIONS NOT 20-PERCENT OWNED.

(a) GENERAL RULE.—The following provisions are each amended by striking out "80 percent" and inserting in lieu thereof "70 percent":

(1) Section 243(a)(1) (relating to dividends received by corporations).

(2) Subsections (a)(3) and (b)(2) of section 244 (relating to dividends received on certain preferred stock).

(b) RETENTION OF 80-PERCENT DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM 20-PERCENT OWNED CORPORATIONS.—Section 243 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RETENTION OF 80-PERCENT DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM 20-PERCENT OWNED CORPORATIONS.—

"(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation—

"(A) subsection (a)(1) of this section, and

"(B) subsections (a)(3) and (b)(2) of section 244,

shall be applied by substituting '80 percent' for '70 percent'.

"(2) 20-PERCENT OWNED CORPORATION.—For purposes of this section, the term '20-percent owned corporation' means any corporation if 20 percent or more of the stock of such corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account."

(c) MODIFICATIONS TO TAXABLE YEAR LIMITATIONS.—

(1) Subsection (b) of section 246 (relating to limitation on aggregate amount of deductions) is amended—

(A) by striking out "80 percent" in paragraph (1) and inserting in lieu thereof "the percentage determined under paragraph (3)", and

(B) by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULES.—The provisions of paragraph (1) shall be applied—

"(A) first separately with respect to dividends from 20-percent owned corporations (as defined in section 243(c)(2)) and the percentage determined under this paragraph shall be 80 percent, and

"(B) then separately with respect to dividends not from 20-percent owned corporations and the percentage determined under this paragraph shall be 70 percent and the taxable income shall be reduced by the aggregate amount of dividends from 20-percent owned corporations (as so defined)."

(2) Subparagraph (B) of section 805(a)(4) is amended by striking out "shall be 80 percent of the life insurance company taxable income" and inserting in lieu thereof "shall be the percentage determined under section 246(b)(3) of the life insurance com-

pany taxable income (and such limitation shall be applied as provided in section 246(b)(3))".

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 245(c)(1) is amended by striking out "85 percent" and inserting in lieu thereof "70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2))".

(2) Paragraph (1) of section 246A(a) is amended by striking out "80 percent" and inserting in lieu thereof "70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2))".

(3) Subparagraph (A) of section 854(b)(1) is amended by inserting before the period at the end thereof the following: "and such dividend shall be treated as received from a corporation which is not a 20-percent owned corporation".

(4) Paragraph (2) of section 861(a) is amended—

(A) by striking out "100/85th" and inserting in lieu thereof "100/70th", and

(B) by adding at the end thereof the following new sentence:

"In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting '100/80th' for '100/70th'."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to dividends received or accrued after December 31, 1987, in taxable years ending after such date.

(2) AMENDMENTS RELATING TO LIMITATIONS.—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 1987.

SEC. 10222. CERTAIN EARNINGS AND PROFITS ADJUSTMENTS NOT TO APPLY FOR CERTAIN PURPOSES.

(a) SPECIAL RULE FOR DETERMINING ADJUSTED BASIS OF STOCK OF MEMBERS OF AFFILIATED GROUP.—

(1) IN GENERAL.—Section 1503 (relating to computation and payment of tax by affiliated group) is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR DETERMINING ADJUSTMENTS TO BASIS.—

"(1) IN GENERAL.—Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—

"(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof, and

"(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce tax attributes (other than basis in property).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) INTRAGROUP STOCK.—The term 'intragroup stock' means any stock which—

"(i) is in a corporation which is or was a member of an affiliated group of corporations, and

"(ii) is held by another member of such group.

Such term includes any other property the basis of which is determined (in whole or in part) by reference to the basis of stock described in the preceding sentence.

"(B) CONSOLIDATED YEAR.—The term 'consolidated year' means any taxable year for which the affiliated group makes a consolidated return."

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to any intragroup stock disposed of after December 15, 1987. For purposes of determining the adjustments to the basis of such stock, such amendment shall be deemed to have been effect for all periods whether before, on, or after December 15, 1987.

(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply to any intragroup stock disposed of after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987.

(b) DISTRIBUTIONS RECEIVED BY 20-PERCENT CORPORATE SHAREHOLDERS.—

(1) IN GENERAL.—Paragraph (1) of section 301(f) (relating to special rule for certain distributions received by 20-percent corporate shareholders) is amended by striking out "subsection (n) thereof" and inserting in lieu thereof "subsections (k) and (n) thereof".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to distributions after December 15, 1987. For purposes of applying such amendment to any such distribution—

(i) for purposes of determining earnings and profits, such amendment shall be deemed to be in effect for all periods whether before, on, or after December 15, 1987, but

(ii) such amendment shall not affect the determination of whether any distribution on or before December 15, 1987, is a dividend and the amount of any reduction in accumulated earnings and profits on account of any such distribution.

(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on any disposition described in subsection (a)(2)(B) of this section.

SEC. 10223. TREATMENT OF MIRROR SUBSIDIARY TRANSACTIONS.

(a) CONSOLIDATED RETURN REGULATIONS NOT TO APPLY FOR PURPOSES OF NONRECOGNITION UNDER SECTION 337.—Subsection (c) of section 337 (defining 80-percent distributee) is amended by adding at the end thereof the following new sentence: "For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation."

(b) AMENDMENT TO SECTION 355.—Subparagraph (D) of section 355(b)(2) (relating to requirements as to active business) is amended—

(1) by amending clause (i) to read as follows:

"(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B), or",

(2) by striking out "by another corporation" in clause (ii) and inserting in lieu thereof "such distributee corporation", and

(3) by adding at the end thereof the following new sentence: "For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation."

(c) AMENDMENT TO SECTION 304.—Subsection (b) of section 304 (relating to redemption through use of related corporations) is amended by adding at the end thereof the following new paragraph:

"(4) TREATMENT OF CERTAIN INTRAGROUP TRANSACTIONS.—

"(A) IN GENERAL.—In the case of any transfer described in subsection (a) of stock of 1 member of an affiliated group to another member of such group, proper adjustments shall be made to—

"(i) the adjusted basis of any intragroup stock, and

"(ii) the earnings and profits of any member of such group,

to the extent necessary to carry out the purposes of this section.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) AFFILIATED GROUP.—The term 'affiliated group' has the meaning given such term by section 1504(a).

"(ii) INTRAGROUP STOCK.—The term 'intragroup stock' means any stock which—

"(I) is in a corporation which is a member of an affiliated group, and

"(II) is held by another member of such group."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions or transfers after December 15, 1987.

(2) EXCEPTIONS.—

(A) DISTRIBUTIONS.—The amendments made by this section shall not apply to any distribution after December 15, 1987, and before January 1, 1993, if—

(i) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before December 15, 1987, or

(ii) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

For purposes of the preceding sentence, stock described in section 1504(a)(4) of the Internal Revenue Code of 1986 shall not be taken into account.

(B) SECTION 304 TRANSFERS.—The amendment made by subsection (c) shall not apply to any transfer after December 15, 1987, and before January 1, 1993, if such transfer is—

(i) between corporations which are members of the same affiliated group on December 15, 1987, or

(ii) between corporations which become members of the same affiliated group before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

(C) DISTRIBUTIONS COVERED BY PRIOR TRANSITION RULE.—The amendments made by this section shall not apply to any distribution to which the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 do not apply.

SEC. 10224. BENEFITS OF GRADUATED CORPORATE RATES NOT ALLOWED TO PERSONAL SERVICE CORPORATIONS.

(a) GENERAL RULE.—Subsection (b) of section 11 (relating to corporate tax rates) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be the sum of—

"(A) 15 percent of so much of the taxable income as does not exceed $50,000,

"(B) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000, and

"(C) 34 percent of so much of the taxable income as exceeds $75,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) $11,750.

"(2) CERTAIN PERSONAL SERVICE CORPORATIONS NOT ELIGIBLE FOR GRADUATED RATES.—Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 34 percent of the taxable income."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10225. AMENDMENTS TO SECTION 382.

(a) TREATMENT OF WORTHLESS STOCK.—Paragraph (4) of section 382(g) (defining ownership change) is amended by adding at the end thereof the following new subparagraph:

"(D) TREATMENT OF WORTHLESS STOCK.—If any stock held by a 50-percent shareholder is treated by such shareholder

as becoming worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder—

"(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

"(ii) shall not be treated as having owned such stock during any prior period.

For purposes of the preceding sentence, the term '50-percent shareholder' means any person owning 50 percent or more of the stock of the corporation at any time during the 3-year period ending on the last day of the taxable year with respect to which the stock was so treated."

(b) TREATMENT OF DEPRECIATION UNDER BUILT-IN LOSS RULES.—Subparagraph (B) of section 382(h)(2) (defining recognized built-in loss) is amended by adding at the end thereof the following new sentence:

"Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii)."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply in the case of stock treated as becoming worthless in taxable years beginning after December 31, 1987.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply in the case of ownership changes (as defined in section 382 of the Internal Revenue Code of 1986 as amended by subsection (a)) after December 15, 1987; except that such amendment shall not apply in the case of any ownership change pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change.

SEC. 10226. LIMITATION ON USE OF PREACQUISITION LOSSES TO OFFSET BUILT-IN GAINS.

(a) GENERAL RULE.—Part V of subchapter C of chapter 1 (relating to carryovers) is amended by adding at the end thereof the following new section:

"SEC. 384. LIMITATION ON USE OF PREACQUISITION LOSSES TO OFFSET BUILT-IN GAINS.

"(a) GENERAL RULE.—

"(1) STOCK ACQUISITIONS, ETC.—If—

"(A) a corporation (hereinafter in this section referred to as the 'gain corporation') becomes a member of an affiliated group, and

"(B) such corporation has a net unrealized built-in gain, the income of such corporation for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss of any other member of such group.

"(2) ASSET ACQUISITIONS.—If—

"(A) the assets of a corporation (hereinafter in this section referred to as the 'gain corporation') are acquired by another corporation—

"(i) in a liquidation to which section 332 applies, or

"(ii) in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

"(B) the gain corporation has a net unrealized built-in gain,

the income of the acquiring corporation for any recognition period taxable year (to the extent attributable to recognized built-in gains of the gain corporation) shall not be offset by any preacquisition loss of any corporation (other than the gain corporation).

"(b) EXCEPTION WHERE 50 PERCENT OF GAIN CORPORATION HELD.—Subsection (a) shall not apply if more than 50 percent of the stock (by vote and value) of the gain corporation was held throughout the 5-year period ending on the acquisition date—

"(1) in any case described in subsection (a)(1), by members of the affiliated group referred to in subsection (a)(1), or

"(2) in any case described in subsection (a)(2), by the acquiring corporation or members of such acquiring corporation's affiliated group.

For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.

"(c) DEFINITIONS.—For purposes of this section—

"(1) RECOGNIZED BUILT-IN GAIN.—

"(A) IN GENERAL.—The term 'recognized built-in gain' means any gain recognized during the recognition period on the disposition of any asset except to the extent the gain corporation (or, in any case described in subsection (a)(2), the acquiring corporation) establishes that—

"(i) such asset was not held by the gain corporation on the acquisition date, or

"(ii) such gain exceeds the excess (if any) of—

"(I) the fair market value of such asset on the acquisition date, over

"(II) the adjusted basis of such asset on such date.

"(B) TREATMENT OF CERTAIN INCOME ITEMS.—Any item of income which is properly taken into account for any recognition period taxable year but which is attributable to periods before the acquisition date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account and shall be taken into account in determining the amount of the net unrealized built-in gain.

"(C) LIMITATION.—The amount of the recognized built-in gains for any recognition period taxable year shall not exceed—

"(i) the net unrealized built-in gain, reduced by

"(ii) the recognized built-in gains for prior years ending in the recognition period which (but for this section) would have been offset by preacquisition losses.

"(2) ACQUISITION DATE.—The term 'acquisition date' means the date on which the gain corporation becomes a member of

the affiliated group or, in any case described in subsection (a)(2), the date of the distribution or transfer in the liquidation or reorganization.

"(3) PREACQUISITION LOSS.—

"(A) IN GENERAL.—The term 'preacquisition loss' means—

"(i) any net operating loss carryforward to the taxable year in which the acquisition date occurs, and

"(ii) any net operating loss for the taxable year in which the acquisition date occurs to the extent such loss is allocable to the period in such year on or before the acquisition date.

Except as provided in regulations, the net operating loss shall, for purposes of clause (ii), be allocated ratably to each day in the year.

"(B) TREATMENT OF RECOGNIZED BUILT-IN LOSS.—In the case of a corporation with a net unrealized built-in loss, the term 'preacquisition loss' includes any recognized built-in loss.

"(4) OTHER DEFINITIONS.—Except as provided in regulations, the terms 'net unrealized built-in gain', 'net unrealized built-in loss', 'recognized built-in loss', 'recognition period', and 'recognition period taxable year', have the same respective meanings as when used in section 382(h), except that the acquisition date shall be taken into account in lieu of the change date.

"(d) LIMITATION ALSO TO APPLY TO EXCESS CREDITS OR NET CAPITAL LOSSES.—Rules similar to the rules of subsection (a) shall also apply in the case of any excess credit (as defined in section 383(a)(2)) or net capital loss.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to ensure that the purposes of this section may not be circumvented through—

"(1) the use of any provision of law or regulations (including subchapter K of this chapter), or

"(2) contributions of property to the gain corporation."

(b) CLERICAL AMENDMENT.—The table of sections for part V of subchapter C of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 384. Limitation on use of preacquisition losses to offset built-in gains."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in cases where the acquisition date (as defined in section 384(c)(2) of the Internal Revenue Code of 1986 as added by this section) is after December 15, 1987; except that such amendments shall not apply in the case of any transaction pursuant to—

(1) a binding written contract in effect on or before December 15, 1987, or

(2) a letter of intent or agreement of merger signed on or before December 15, 1987.

SEC. 10227. RECAPTURE OF LIFO AMOUNT IN THE CASE OF ELECTIONS BY S CORPORATIONS.

(a) GENERAL RULE.—Section 1363 (relating to effect of election on corporations) is amended by adding at the end thereof the following new subsection:

"(d) RECAPTURE OF LIFO BENEFITS.—

"(1) IN GENERAL.—If—

"(A) an S corporation was a C corporation for the last taxable year before the first taxable year for which the election under section 1362(a) was effective, and

"(B) the corporation inventoried goods under the LIFO method for such last taxable year,

the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year (and appropriate adjustments to the basis of inventory shall be made to take into account the amount included in gross income under this paragraph).

"(2) ADDITIONAL TAX PAYABLE IN INSTALLMENTS.—

"(A) IN GENERAL.—Any increase in the tax imposed by this chapter by reason of this subsection shall be payable in 4 equal installments.

"(B) DATE FOR PAYMENT OF INSTALLMENTS.—The first installment under subparagraph (A) shall be paid on or before the due date (determined without regard to extensions) for the return of the tax imposed by this chapter for the last taxable year for which the corporation was a C corporation and the 3 succeeding installments shall be paid on or before the due date (as so determined) for the corporation's return for the 3 succeeding taxable years.

"(C) NO INTEREST FOR PERIOD OF EXTENSION.—Notwithstanding section 6601(b), for purposes of section 6601, the date prescribed for the payment of each installment under this paragraph shall be determined under this paragraph.

"(3) LIFO RECAPTURE AMOUNT.—For purposes of this subsection, the term 'LIFO recapture amount' means the amount (if any) by which—

"(A) the inventory amount of the inventory asset under the first-in, first-out method authorized by section 471, exceeds

"(B) the inventory amount of such assets under the LIFO method.

For purposes of the preceding sentence, inventory amounts shall be determined as of the close of the last taxable year referred to in paragraph (1).

"(4) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) LIFO METHOD.—The term 'LIFO method' means the method authorized by section 472.

"(B) INVENTORY ASSETS.—The term 'inventory assets' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

"(C) METHOD OF DETERMINING INVENTORY AMOUNT.—The inventory amount of assets under a method authorized by section 471 shall be determined—

"(i) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

"(ii) if clause (i) does not apply, by using cost or market, whichever is lower."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2) the amendment made by subsection (a) shall apply in the case of elections made after December 17, 1987.

(2) EXCEPTION.—The amendment made by subsection (a) shall not apply in the case of any election made by a corporation after December 17, 1987, and before January 1, 1989, if, on or before December 17, 1987—

(A) there was a resolution adopted by the board of directors of such corporation to make an election under subchapter S of chapter 1 of the Internal Revenue Code of 1986, or

(B) there was a ruling request with respect to the business filed with the Internal Revenue Service expressing an intent to make such an election.

SEC. 10228. EXCISE TAX ON RECEIPT OF GREENMAIL.

(a) IN GENERAL.—Subtitle E is amended by adding at the end thereof the following new chapter:

"CHAPTER 54—GREENMAIL

"Sec. 5881. Greenmail.

"SEC. 5881. GREENMAIL.

"(a) IMPOSITION OF TAX.—There is hereby imposed on any person who receives greenmail a tax equal to 50 percent of gain realized by such person on such receipt.

"(b) GREENMAIL.—For purposes of this section, the term 'greenmail' means any consideration transferred by a corporation to directly or indirectly acquire its stock from any shareholder if—

"(1) such shareholder held such stock (as determined under section 1223) for less than 2 years before entering into the agreement to make the transfer,

"(2) at some time during the 2-year period ending on the date of such acquisition—

"(A) such shareholder,

"(B) any person acting in concert with such shareholder, or

"(C) any person who is related to such shareholder or person described in subparagraph (B),

made or threatened to make a public tender offer for stock of such corporation, and

"(3) such acquisition is pursuant to an offer which was not made on the same terms to all shareholders.

For purposes of the preceding sentence, payments made in connection with, or in transactions related to, an acquisition shall be treated as paid in such acquisition.

"(c) OTHER DEFINITIONS.—For purposes of this section—

"(1) PUBLIC TENDER OFFER.—The term 'public tender offer' means any offer to purchase or otherwise acquire stock or assets in a corporation if such offer was or would be required to be filed or registered with any Federal or State agency regulating securities.

"(2) RELATED PERSON.—A person is related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b).

"(d) TAX APPLIES WHETHER OR NOT GAIN RECOGNIZED.—The tax imposed by this section shall apply whether or not the gain referred to in subsection (a) is recognized."

(b) DENIAL OF INCOME TAX DEDUCTION FOR GREENMAIL TAX.—Paragraph (6) of section 275(a) is amended by striking out "and 46" and inserting in lieu thereof "46, and 54".

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end thereof the following new item:

"Chapter 54. Greenmail."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to consideration received after the date of the enactment of this Act in taxable years ending after such date; except that such amendments shall not apply in the case of any acquisition pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.

PART IV—FOREIGN TAX PROVISIONS

SEC. 10231. DENIAL OF FOREIGN TAX CREDIT FOR TAXES PAID OR ACCRUED TO SOUTH AFRICA.

(a) GENERAL RULE.—Paragraph (2) of section 901(j) (relating to denial of foreign tax credit, etc., with respect to certain foreign countries) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE FOR SOUTH AFRICA.—

"(i) IN GENERAL.—In addition to any period during which this subsection would otherwise apply to South Africa, this subsection shall apply to South Africa during the period—

"(I) beginning on January 1, 1988, and

"(II) ending on the date the Secretary of State certifies to the Secretary of the Treasury that South Africa meets the requirements of section 311(a) of the Comprehensive Anti-Apartheid Act of 1986 (as in effect on the date of the enactment of this subparagraph).

"(ii) SOUTH AFRICA DEFINED.—For purposes of clause (i), the term 'South Africa' has the meaning given to such term by paragraph (6) of section 3 of the Comprehensive Anti-Apartheid Act of 1986 (as so in effect)."

(b) TECHNICAL AMENDMENTS.—Paragraph (1) of section 901(j) is amended—

(1) by striking out "to which" in subparagraph (A) and inserting in lieu thereof "during which", and

(2) by striking out "any country so identified" and inserting in lieu thereof "such country".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

PART V—INSURANCE PROVISIONS

SEC. 10241. INTEREST RATE USED IN COMPUTING TAX RESERVES FOR LIFE INSURANCE COMPANIES MAY NOT BE LESS THAN APPLICABLE FEDERAL RATE.

(a) IN GENERAL.—Subparagraph (B) of section 807(d)(2) (relating to method of computing reserves for purposes of determining income) is amended to read as follows:

"(B) the greater of—

"(i) the applicable Federal interest rate, or

"(ii) the prevailing State assumed interest rate, and".

(b) APPLICABLE FEDERAL INTEREST RATE.—

(1) IN GENERAL.—Paragraph (4) of section 807(d) (defining State assumed interest rate) is amended to read as follows:

"(4) APPLICABLE FEDERAL INTEREST RATE; PREVAILING STATE ASSUMED INTEREST RATE.—For purposes of this subsection—

"(A) APPLICABLE FEDERAL INTEREST RATE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'applicable Federal interest rate' means the annual rate determined by the Secretary under section 846(c)(2) for the calendar year in which the contract was issued.

"(ii) ELECTION TO RECOMPUTE FEDERAL INTEREST RATE EVERY 5 YEARS.—

"(I) IN GENERAL.—In computing the amount of the reserve with respect to any contract to which an election under this clause applies for periods during any recomputation period, the applicable Federal interest rate shall be the annual rate determined by the Secretary under section 846(c)(2) for the 1st year of such period. No change in the applicable Federal interest rate shall be made under the preceding sentence unless such change would equal or exceed 1/2 of 1 percentage point.

"(II) RECOMPUTATION PERIOD.—For purposes of subclause (I), the term 'recomputation period' means, with respect to any contract, the 5 calendar year period beginning with the 5th calendar year beginning after the calendar year in which the contract was issued (and each subsequent 5 calendar year period).

"(III) ELECTION.—An election under this clause shall apply to all contracts issued during the calendar year for which the election was made or during any subsequent calendar year unless such election is revoked with the consent of the Secretary.

"(IV) SPREAD NOT AVAILABLE.—Subsection (f) shall not apply to any adjustment required under this clause.

"(B) PREVAILING STATE ASSUMED INTEREST RATE.—

"(i) IN GENERAL.—The term 'prevailing State assumed interest rate' means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

"(ii) WHEN RATE DETERMINED.—The prevailing State assumed interest rate with respect to any contract shall be determined as of the beginning of the calendar year in which the contract was issued."

(2) TECHNICAL AMENDMENTS.—

(A) The third to the last sentence of section 807(c) is amended by striking out "the higher of" and all that follows and inserting in lieu thereof "whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit."

(B) Paragraph (2) of section 812(b) is amended—

(i) by striking out "at the prevailing State assumed rate or, where such rate is not used, another appropriate rate" and inserting in lieu thereof "at the greater of the prevailing State assumed rate or the applicable Federal interest rate", and

(ii) by adding at the end thereof the following new sentence:

"In any case where the prevailing State assumed rate is not used, another appropriate rate shall be treated as the prevailing State assumed rate for purposes of subparagraph (A)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts issued in taxable years beginning after December 31, 1987.

SEC. 10242. TREATMENT OF FOREIGN INSURANCE COMPANIES.

(a) IN GENERAL.—Section 842 (relating to foreign corporations carrying on insurance business) is amended to read as follows:

"SEC. 842. FOREIGN COMPANIES CARRYING ON INSURANCE BUSINESS.

"(a) TAXATION UNDER THIS SUBCHAPTER.—If a foreign company carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such company shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of

its income which is from sources within the United States, such a foreign company shall be taxable as provided in section 881.

"(b) MINIMUM EFFECTIVELY CONNECTED NET INVESTMENT INCOME.—

"(1) IN GENERAL.—In the case of a foreign company taxable under part I or II of this subchapter for the taxable year, its net investment income for such year which is effectively connected with the conduct of an insurance business within the United States shall be not less than the product of—

"(A) the required U.S. assets of such company, and

"(B) the domestic investment yield applicable to such company for such year.

"(2) REQUIRED U.S. ASSETS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the required U.S. assets of any foreign company for any taxable year is an amount equal to the product of—

"(i) the mean of such foreign company's total insurance liabilities on United States business, and

"(ii) the domestic asset/liability percentage applicable to such foreign company for such year.

"(B) TOTAL INSURANCE LIABILITIES.—For purposes of this paragraph—

"(i) COMPANIES TAXABLE UNDER PART I.—In the case of a company taxable under part I, the term 'total insurance liabilities' means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

"(ii) COMPANIES TAXABLE UNDER PART II.—In the case of a company taxable under part II, the term 'total insurance liabilities' means the sum of unearned premiums and unpaid losses.

"(C) DOMESTIC ASSET/LIABILITY PERCENTAGE.—The domestic asset/liability percentage applicable for purposes of subparagraph (A)(ii) to any foreign company for any taxable year is a percentage determined by the Secretary on the basis of a ratio—

"(i) the numerator of which is the mean of the assets of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

"(ii) the denominator of which is the mean of the total insurance liabilities of the same companies.

"(3) DOMESTIC INVESTMENT YIELD.—The domestic investment yield applicable for purposes of paragraph (1)(B) to any foreign company for any taxable year is the percentage determined by the Secretary on the basis of a ratio—

"(A) the numerator of which is the net investment income of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

"(B) the denominator of which is the mean of the assets of the same companies held for the production of such income.

"(4) ELECTION TO USE WORLDWIDE YIELD.—

"(A) IN GENERAL.—If the foreign company makes an election under this paragraph, such company's worldwide current investment yield shall be taken into account in lieu of the domestic investment yield for purposes of paragraph (1)(B).

"(B) WORLDWIDE CURRENT INVESTMENT YIELD.—For purposes of subparagraph (A), the term 'worldwide current investment yield' means the percentage obtained by dividing—

"(i) the net investment income of the company from all sources, by

"(ii) the mean of all assets of the company (whether or not held in the United States) held for the production of investment income.

"(C) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(5) NET INVESTMENT INCOME.—For purposes of this subsection, the term 'net investment income' means—

"(A) gross investment income (within the meaning of section 834(b)), reduced by

"(B) expenses allocable to such income.

"(c) SPECIAL RULES FOR PURPOSES OF SUBSECTION (b).—

"(1) COORDINATION WITH SMALL LIFE INSURANCE COMPANY DEDUCTION.—In the case of a foreign company taxable under part I, subsection (b) shall be applied before computing the small life insurance company deduction.

"(2) REDUCTION IN SECTION 881 TAXES.—

"(A) IN GENERAL.—The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which bears the same ratio to such tax as—

"(i) the amount of the increase in effectively connected income of the company resulting from subsection (b), bears to

"(ii) the amount which would be subject to tax under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894.

"(B) LIMITATION ON REDUCTION.—The reduction under subparagraph (A) shall not exceed the increase in taxes under part I or II (as the case may be) by reason of the increase in effectively connected income of the company resulting from subsection (b).

"(3) ADJUSTMENT TO LIMITATION ON DEDUCTION FOR POLICYHOLDER DIVIDENDS IN THE CASE OF FOREIGN MUTUAL LIFE INSURANCE COMPANIES.—For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the excess of—

"(A) the required U.S. assets of the company (determined under subsection (b)(2)), over

"(B) the mean of the assets held in the United States during the taxable year.

"(4) DATA USED IN DETERMINING DOMESTIC ASSET/LIABILITY PERCENTAGES AND DOMESTIC INVESTMENT YEILDS.—Each domestic asset/liability percentage, and each domestic investment yield, for any taxable year shall be based on such representative data with respect to domestic insurance companies for the second preceding taxable year as the Secretary considers appropriate.

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

"(1) providing for the proper treatment of segregated asset accounts,

"(2) providing for proper adjustments in succeeding taxable years where the company's actual net investment income for any taxable year which is effectively connected with the conduct of an insurance business within the United States exceeds the amount required under subsection (b)(1), and

"(3) providing for the proper treatment of investments in domestic subsidiaries."

(b) PART II COMPANIES SUBJECT TO SAME EFFECTIVELY CONNECTED INCOME RULE AS PART I COMPANIES.—Subparagraph (C) of section 864(c)(4) (relating to income from sources without the United States) is amended by inserting "or part II" after "part I".

(c) REPEAL OF SECTION 813—

(1) Section 813 (relating to foreign life insurance companies) is hereby repealed.

(2) Subsection (h) of section 816 is amended by striking out "section 813(a)(4)(B)" and inserting in lieu thereof "section 842(c)(1)(A)".

(3) Paragraph (2) of section 4371 is amended by striking out "section 813" and inserting in lieu thereof "section 842(b)".

(4) The table of sections for part I of subchapter L of chapter 1 is amended by striking out the item relating to section 813.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 10243. TREATMENT OF MUTUAL LIFE INSURANCE COMPANY POLICYHOLDER DIVIDENDS FOR PURPOSES OF BOOK PREFERENCE.

(a) GENERAL RULE.—Paragraph (2) of section 56(f) (defining adjusted net book income) is amended by redesignating subparagraph (H) as subparagraph (I) and by inserting after subparagraph (G) the following new subparagraph:

"(H) SPECIAL RULES FOR LIFE INSURANCE COMPANIES.—

"(i) POLICYHOLDER DIVIDENDS OF MUTUAL COMPANIES.—In determining the adjusted net book income of any mutual life insurance company, a reduction shall be allowed for policyholder dividends with respect to any taxable year only to the extent such dividends exceed the differential earnings amount determined for such taxable year under section 809.

"(ii) OTHER ADJUSTMENTS.—To the extent provided by the Secretary, such additional adjustments shall be made as may be necessary to make the calculation of adjusted net book income in the case of any life insur-

ance company consistent with the calculation of adjusted net book income generally."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10244. CERTAIN INSURANCE SYNDICATES.

(a) STUDY.—The Secretary of the Treasury (or his delegate) shall conduct a study of the proper Federal income tax treatment of income earned by members of insurance or reinsurance syndicates. Not later than April 1, 1988, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the results of the study conducted under this subsection, together with such recommendations as he may deem advisable.

(b) RENEGOTIATION OF CLOSING AGREEMENT.—Not later than January 1, 1990, the Secretary of the Treasury (or his delegate) shall renegotiate the closing agreement with the underwriters participating in certain insurance or reinsurance syndicates which was signed by the Internal Revenue Service on April 1, 1980, to implement the conclusions reached in the study conducted under subsection (a).

Subtitle C—Estimated Tax Provisions

SEC. 10301. REVISION OF CORPORATE ESTIMATED TAX PROVISIONS.

(a) GENERAL RULE.—Section 6655 (relating to failure by corporation to pay estimated income tax) is amended to read as follows:

"SEC. 6655. FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

"(a) ADDITION TO TAX.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under chapter 1 for the taxable year an amount determined by applying—

"(1) the underpayment rate established under section 6621,

"(2) to the amount of the underpayment,

"(3) for the period of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT; PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 3rd month following the close of the taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

"(1) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each taxable year.

"(2) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	*The due date is:*
1st	*April 15*
2nd	*June 15*
3rd	*September 15*
4th	*December 15.*

"(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

"(1) AMOUNT.—

"(A) IN GENERAL.—Except as otherwise provided in this section, the amount of any required installment shall be 25 percent of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—Except as otherwise provided in this subsection, the term 'required annual payment' means the lesser of—

"(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

"(ii) 100 percent of the tax shown on the return of the corporation for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months, or the corporation did not file a return for such preceding taxable year showing a liability for tax.

"(2) LARGE CORPORATIONS REQUIRED TO PAY 90 PERCENT OF CURRENT YEAR TAX.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), clause (ii) of paragraph (1)(B) shall not apply in the case of a large corporation.

"(B) MAY USE LAST YEAR'S TAX FOR 1ST INSTALLMENT.—Subparagraph (A) shall not apply for purposes of determining the amount of the 1st required installment for any taxable year. Any reduction in such 1st installment by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction.

"(e) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT OR ADJUSTED SEASONAL INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER SUBSECTION (d).—

"(1) IN GENERAL.—In the case of any required installment, if the corporation establishes that the annualized income installment or the adjusted seasonal installment is less than the amount determined under section (d)(1) (as modified by subsection (d)(2))—

"(A) the amount of such required installment shall be the annualized income installment (or, if lesser, the adjusted seasonal installment), and

"(B) any reduction in a required installment resulting from the application of this paragraph shall be recaptured

by increasing the amount of the next required installment determined under subsection (d)(1) (as so modified) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subparagraph).

A reduction shall be treated as recaptured for purposes of subparagraph (B) if 90 percent of the reduction is recaptured.

"(2) DETERMINATION OF ANNUALIZED INCOME INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the annualized income installment is the excess (if any) of—

"(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and modified alternative minimum taxable income—

"(I) for the first 3 months of the taxable year, in the case of the 1st required installment,

"(II) for the first 3 months or for the first 5 months of the taxable year, in the case of the 2nd required installment,

"(III) for the first 6 months or for the first 8 months of the taxable year in the case of the 3rd required installment, and

"(IV) for the first 9 months or for the first 11 months of the taxable year, in the case of the 4th required installment, over

"(ii) the aggregate amount of any prior required installments for the taxable year.

"(B) SPECIAL RULES.—For purposes of this paragraph—

"(i) ANNUALIZATION.—The taxable income, alternative minimum taxable income, and modified alternative minimum taxable income shall be placed on an annualized basis under regulations prescribed by the Secretary.

"(ii) APPLICABLE PERCENTAGE.—

"In the case of the following required installments:	*The applicable percentage is:*
1st	*22.5*
2nd	*45*
3rd	*67.5*
4th	*90*

"(iii) MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.—The term 'modified alternative minimum taxable income' has the meaning given to such term by section 59A(b).

"(3) DETERMINATION OF ADJUSTED SEASONAL INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

"(i) 90 percent of the amount determined under subparagraph (C), over

"(ii) the aggregate amount of all prior required installments for the taxable year.

"(B) LIMITATION ON APPLICATION OF PARAGRAPH.—This paragraph shall apply only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70 percent.

"(C) DETERMINATION OF AMOUNT.—The amount determined under this subparagraph for any installment shall be determined in the following manner—

"(i) take the taxable income for all months during the taxable year preceding the filing month,

"(ii) divided such amount by the base period percentage for all months during the taxable year preceding the filing month,

"(iii) determine the tax on the amount determined under clause (ii), and

"(iv) multiply the tax computed under clause (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

"(D) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) BASE PERIOD PERCENTAGE.—The base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income for the 3 preceding taxable years.

"(ii) FILING MONTH.—The term 'filing month' means the month in which the installment is required to be paid.

"(iii) REORGANIZATION, ETC.—The Secretary may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

"(f) EXCEPTION WHERE TAX IS SMALL AMOUNT.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

"(g) DEFINITIONS AND SPECIAL RULES.—

"(1) TAX.—For purposes of this section, the term 'tax' means the excess of—

"(A) the sum of—

"(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever applies,

"(ii) the tax imposed by section 55,

"(iii) the tax imposed by section 59A, plus

"(iv) the tax imposed by section 887, over

"(B) the sum of—

"(i) the credits against tax provided by part IV of subchapter A of chapter 1, plus

"(ii) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

For purposes of the preceding sentence, in the case of a foreign corporation subject to taxation under section 11 or 1201(a), or

under subchapter L of chapter 1, the tax imposed by section 881 shall be treated as a tax imposed by section 11.

"(2) LARGE CORPORATION.—

"(A) IN GENERAL.—For purposes of this section, the term 'large corporation' means any corporation if such corporation (or any predecessor corporation) had taxable income of $1,000,000 or more for any taxable year during the testing period.

"(B) RULES FOR APPLYING SUBPARAGRAPH (A).—

"(i) TESTING PERIOD.—For purposes of subparagraph (A), the term 'testing period' means the 3 taxable years immediately preceding the taxable year involved.

"(ii) MEMBERS OF CONTROLLED GROUP.—For purposes of applying subparagraph (A) to any taxable year in the testing period with respect to corporations which are component members of a controlled group of corporations for such taxable year, the $1,000,000 amount specified in subparagraph (A) shall be divided among such members under rules similar to the rules of section 1561.

"(iii) CERTAIN CARRYBACKS AND CARRYOVERS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), taxable income shall be determined without regard to any amount carried to the taxable year under section 172 or 1212(a).

"(3) CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of this section—

"(A) Any organization subject to the tax imposed by section 511, and any private foundation, shall be treated as a corporation subject to tax under section 11.

"(B) Any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11.

"(C) Any reference to taxable income shall be treated as including a reference to unrelated business taxable income or net investment income (as the case may be).

In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting '5th month' for '3rd month'.

"(h) EXCESSIVE ADJUSTMENT UNDER SECTION 6425.—

"(1) ADDITION TO TAX.—If the amount of an adjustment under section 6425 made before the 15th day of the 3rd month following the close of the taxable year is excessive, there shall be added to the tax under chapter 1 for the taxable year an amount determined at the underpayment rate established under section 6621 upon the excessive amount from the date on which the credit is allowed or the refund is paid to such 15th day.

"(2) EXCESSIVE AMOUNT.—For purposes of paragraph (1), the excessive amount is equal to the amount of the adjustment or (if smaller) the amount by which—

"(A) the income tax liability (as defined in section 6425(c)) for the taxable year as shown on the return for the taxable year, exceeds

"(B) the estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

"(i) FISCAL YEARS AND SHORT YEARS.—

"(1) FISCAL YEARS.—In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

"(2) SHORT TAXABLE YEAR.—This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 6154 of such Code is hereby repealed.

(2) Subparagraph (C) of section 585(c)(3) of such Code is amended by striking out "section 6655(d)(3)" and inserting in lieu thereof "section 6655(e)(2)(A)(i)".

(3) Paragraph (1) of section 6201(b) of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(4) Subsection (c) of section 6425 of such Code is amended by striking out "section 6655(g)" and inserting in lieu thereof "section 6655(h)".

(5) Subsection (h) of section 6601 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(6) Subsection (e) of section 6651 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(7) The table of sections for subchapter A of chapter 62 of such Code is amended by striking out the item relating to section 6154.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 10302. REVISED WITHHOLDING CERTIFICATES REQUIRED TO BE PUT INTO EFFECT MORE PROMPTLY.

(a) GENERAL RULE.—Subparagraph (B) of section 3402(f)(3) (relating to when certificate takes effect) is amended to read as follows:

"(B) FURNISHED TO TAKE PLACE OF EXISTING CERTIFICATE.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

"(ii) EMPLOYER MAY ELECT EARLIER EFFECTIVE DATE.—At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day

on which the certificate is so furnished and before the 30th day referred to in clause (i).

"(iii) CHANGE OF STATUS WHICH AFFECTS NEXT YEAR.—Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act.

SEC. 10303. ESTIMATED TAX PENALTIES FOR 1987.

(a) DELAY OF INCREASE IN CURRENT YEAR LIABILITY TEST FOR INDIVIDUALS.—Notwithstanding section 1541(c) of the Tax Reform Act of 1986, the amendments made by section 1541 of such Act shall apply only to taxable years beginning after December 31, 1987.

(b) CORPORATE PROVISIONS.—

(1) RATIFICATION OF SECRETARIAL WAIVER.—The Congress hereby ratifies the safe harbor provided by paragraph (b) of the Treasury Temporary Regulation 1.6655-2T.

(2) CORPORATIONS ALSO MAY USE 1986 TAX TO DETERMINE AMOUNT OF CERTAIN ESTIMATED TAX INSTALLMENTS DUE ON OR BEFORE JUNE 15, 1987.—

(A) IN GENERAL.—In the case of a large corporation, no addition to tax shall be imposed by section 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an estimated tax installment to which this subsection applies if no addition would be imposed with respect to such underpayment by reason of section 6655(d)(1) of such Code if such corporation were not a large corporation. The preceding sentence shall apply only to the extent the underpayment is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987.

(B) INSTALLMENT TO WHICH SUBSECTION APPLIES.—This subsection applies to any installment of estimated tax for a taxable year beginning after December 31, 1986, which is due on or before June 15, 1987.

(C) LARGE CORPORATION.—For purposes of this subsection, the term "large corporation" has the meaning given such term by section 6655(i)(2) of such Code (as in effect on the day before the date of the enactment of this Act).

Subtitle D—Estate and Gift Tax Provisions

PART I—GENERAL PROVISIONS

SEC. 10401. 5-YEAR EXTENSION OF EXISTING RATES; PHASEOUT OF BENEFITS OF EXISTING RATES AND UNIFIED CREDIT.

(a) 5-YEAR EXTENSION OF GRADUATED RATES.—Paragraph (2) of section 2001(c) (relating to phasein of 50 percent maximum rate) is amended—

(1) by striking out "1988" in subparagraph (A) and inserting in lieu thereof "1993",

(2) by striking out "in 1984, 1985, 1986, or 1987" in the text of subparagraph (D) and inserting in lieu thereof "after 1983 and before 1993", and

(3) by amending the heading of subparagraph (D) to read as follows:

"(D) AFTER 1983 AND BEFORE 1993.—".

(b) PHASEOUT OF BENEFITS OF GRADUATED RATES AND UNIFIED CREDIT.—

(1) IN GENERAL.—Subsection (c) of section 2001 is amended by adding at the end thereof the following new paragraph:

"(3) PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.—The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds $10,000,000 but does not exceed $21,040,000 ($18,340,000 in the case of decedents dying, and gifts made, after 1992)."

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (b) of section 2001 is amended—

(i) by striking out "in accordance with the rate schedule set forth in subsection (c)" in paragraph (1) and inserting in lieu thereof "under subsection (c)", and

(ii) by striking out "the rate schedule set forth in subsection (c) (as in effect at the decedent's death)" in paragraph (2) and inserting in lieu thereof "the provisions of subsection (c) (as in effect at the decedent's death)".

(B) Subsection (a) of section 2502 is amended—

(i) by striking out "in accordance with the rate schedule set forth in section 2001(c)" in paragraph (1) and inserting in lieu thereof "under section 2001(c)", and

(ii) by striking out "in accordance with such rate schedule" in paragraph (2) and inserting in lieu thereof "under such section".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of decedents dying, and gifts made, after December 31, 1987.

SEC. 10402. INCLUSION RELATED TO VALUATION FREEZES.

(a) IN GENERAL.—Section 2036 (relating to transfers with retained life estate) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) INCLUSION RELATED TO VALUATION FREEZES.—

"(1) IN GENERAL.—For purposes of subsection (a), if—

"(A) any person holds a substantial interest in an enterprise, and

"(B) such person in effect transfers after December 17, 1987, property having a disproportionately large share of the potential appreciation in such person's interest in the enterprise while retaining a disproportionately large share in the income of, or rights in, the enterprise,

then the retention of the retained interest shall be considered to be a retention of the enjoyment of the transferred property.

"(2) SPECIAL RULE FOR SALES TO FAMILY MEMBERS.—The exception contained in subsection (a) for a bona fide sale shall not apply to a transfer described in paragraph (1) if such transfer is to a member of the transferor's family.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) SUBSTANTIAL INTEREST.—A person holds a substantial interest in an enterprise if such person owns (directly or indirectly) 10 percent or more of the voting power or income stream, or both, in such enterprise. For purposes of the preceding sentence, an individual shall be treated as owning any interest in an enterprise which is owned (directly or indirectly) by any member of such individual's family.

"(B) FAMILY.—The term 'family' means, with respect to any individual, such individual's spouse, any lineal descendant of such individual or of such individual's spouse, any parent or grandparent of such individual, and any spouse of any of the foregoing. For purposes of the preceding sentence, a relationship by legal adoption shall be treated as a relationship by blood.

"(C) TREATMENT OF SPOUSE.—An individual and such individual's spouse shall be treated as 1 person.

"(4) COORDINATION WITH SECTION 2035.—For purposes of applying section 2035, any transfer of the retained interest referred to in paragraph (1) shall be treated as a transfer of an interest in the transferred property referred to in paragraph (1).

"(5) COORDINATION WITH SECTION 2043.—In lieu of applying section 2043, appropriate adjustments shall be made for the value of the retained interest."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to estates of decedents dying after December 31, 1987, but only in the case of property transferred after December 17, 1987.

PART II—ESTATE TAX PROVISIONS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS

SEC. 10411. CONGRESSIONAL CLARIFICATION OF ESTATE TAX DEDUCTION FOR SALES OF EMPLOYER SECURITIES.

(a) INTENT OF CONGRESS IN ENACTING SECTION 2057 OF THE INTERNAL REVENUE CODE OF 1986.—Section 2057 (relating to sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED PROCEEDS FROM QUALIFIED SALES.—

"(1) IN GENERAL.—For purposes of this section, the proceeds of a sale of employer securities by an executor to an employee stock ownership plan or an eligible worker-owned cooperative shall not be treated as qualified proceeds from a qualified sale unless—

"(A) the decedent directly owned the securities immediately before death, and

"(B) after the sale, the employer securities—

"(i) are allocated to participants, or

"(ii) are held for future allocation in connection with—

"(I) an exempt loan under the rules of section 4975, or

"(II) a transfer of assets under the rules of section 4980(c)(3).

"(2) NO SUBSTITUTION PERMITTED.—For purposes of paragraph (1)(B), except in the case of a bona fide business transaction (e.g., a substitution of employer securities in connection with a merger of employers), employer securities shall not be treated as allocated or held for future allocation to the extent that such securities are allocated or held for future allocation in substitution of other employer securities that had been allocated or held for future allocation."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986.

SEC. 10412. MODIFICATIONS OF ESTATE TAX DEDUCTION FOR SALE OF EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 2057 (relating to estate tax deduction for sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended to read as follows:

"SEC. 2057. SALES OF EMPLOYER SECURITIES TO EMPLOYEE STOCK OWNERSHIP PLANS OR WORKER-OWNED COOPERATIVES.

"(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to 50 percent of the proceeds of any sale of any qualified employer securities to—

"(1) an employee stock ownership plan, or

"(2) an eligible worker-owned cooperative.

"(b) LIMITATIONS.—

"(1) MAXIMUM REDUCTION IN TAX LIABILITY.—The amount allowable as a deduction under subsection (a) shall not exceed the amount which would result in an aggregate reduction in the tax imposed by section 2001 (determined without regard to any credit allowable against such tax) equal to $750,000.

"(2) DEDUCTION SHALL NOT EXCEED 50 PERCENT OF TAXABLE ESTATE.—The amount of the deduction allowable under subsection (a) shall not exceed 50 percent of the taxable estate (determined without regard to this section).

"(c) LIMITATIONS ON PROCEEDS WHICH MAY BE TAKEN INTO ACCOUNT.—

"(1) DISPOSITIONS BY PLAN OR COOPERATIVE WITHIN 1 YEAR OF SALE.—

"(A) IN GENERAL.—Proceeds from a sale which are taken into account under subsection (a) shall be reduced (but not below zero) by the net sale amount.

"(B) NET SALE AMOUNT.—For purposes of subparagraph (A), the term 'net sale amount' means the excess (if any) of—

"(i) the proceeds of the plan or cooperative from the disposition of employer securities during the 1-year period immediately preceding such sale, over

"(ii) the cost of employer securities purchased by such plan or cooperative during such 1-year period.

"(C) EXCEPTIONS.—For purposes of subparagraph (B)(i), there shall not be taken into account any proceeds of a plan or cooperative from a disposition described in section 4978A(e).

"(D) AGGREGATION RULES.—For purposes of this paragraph, all employee stock ownership plans maintained by an employer shall be treated as 1 plan.

"(2) SECURITIES MUST BE ACQUIRED BY PLAN FROM ASSETS WHICH ARE NOT TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Proceeds from a sale shall not be taken into account under subsection (a) to the extent that such proceeds (as reduced under paragraph (1)) are attributable to transferred assets. For purposes of the preceding sentence, all assets of a plan or cooperative (other than qualified employer securities) shall be treated as first acquired out of transferred assets.

"(B) TRANSFERRED ASSETS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'transferred assets' means assets of an employee stock ownership plan which—

"(I) are attributable to assets held by a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a) (other than an employee stock ownership plan of the employer), or

"(II) were held by the plan when it was not an employee stock ownership plan.

"(ii) EXCEPTION FOR ASSETS HELD ON FEBRUARY 26, 1987.—The term 'transferred assets' shall not include any asset held by the employee stock ownership plan on February 26, 1987.

"(iii) SECRETARIAL AUTHORITY TO WAIVE TREATMENT AS TRANSFERRED ASSET.—The Secretary may provide that assets or a class of assets shall not be treated as transferred assets if the Secretary finds such treatment is not necessary to carry out the purposes of this paragraph.

"(3) OTHER PROCEEDS.—The following proceeds shall not be taken into account under subsection (a):

"(A) PROCEEDS FROM SALE AFTER DUE DATE FOR RETURN.—Any proceeds from a sale which occurs after the date on which the return of the tax imposed by section 2001 is required to be filed (determined by taking into account any extension of time for filing).

"(B) PROCEEDS FROM SALE OF CERTAIN SECURITIES.—Any proceeds from a sale of employer securities which were received by the decedent—

"(i) in a distribution from a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a), or

"(ii) as a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

Any employer security the basis of which is determined by reference to any employer security described in the preceding sentence shall be treated as an employer security to which this subparagraph applies.

"(d) QUALIFIED EMPLOYER SECURITIES.—

"(1) IN GENERAL.—The term 'qualified employer securities' means employer securities—

"(A) which are issued by a domestic corporation which has no stock outstanding which is readily tradable on an established securities market,

"(B) which are includible in the gross estate of the decedent,

"(C) which would have been includible in the gross estate of the decedent if the decedent had died at any time during the shorter of—

"(i) the 5-year period ending on the date of death, or

"(ii) the period beginning on October 22, 1986, and ending on the date of death, and

"(D) with respect to which the executor elects the application of this section.

Subparagraph (C) shall not apply if the decedent died on or before October 22, 1986.

"(2) CERTAIN ASSETS HELD BY SPOUSE.—For purposes of paragraph (1)(C), any employer security which would have been includible in the gross estate of the spouse of a decedent during any period if the spouse had died during such period shall be treated as includible in the gross estate of the decedent during such period.

"(3) PERIODS DURING WHICH DECEDENT NOT AT RISK.—For purposes of paragraph (1)(C), employer securities shall not be treated as includible in the gross estate of the decedent during any period described in section 246(c)(4).

"(e) WRITTEN STATEMENT REQUIRED.—

"(1) IN GENERAL.—No deduction shall be allowed under subsection (a) unless the executor of the estate of the decedent files with the Secretary the statement described in paragraph (2).

"(2) STATEMENT.—A statement is described in this paragraph if it is a verified written statement—

"(A) which is made by—

"(i) the employer whose employees are covered by the employee stock ownership plan, or

"(ii) any authorized officer of the eligible worker-owned cooperative, and

"(B) which—

"(i) acknowledges that the sale of employer securities to the plan or cooperative is a sale to which sections 4978A and 4979A apply, and

"(ii) certifies—

"(I) the net sale amount for purposes of subsection (c)(1), and

"(II) the amount of assets which are not transferred assets for purposes of subsection (c)(2).

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given such term by section 409(l).

"(2) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means—

"(A) a tax credit employee stock ownership plan (within the meaning of section 409(a)), or

"(B) a plan described in section 4975(e)(7).

"(3) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term 'eligible worker-owned cooperative' has the meaning given such term by section 1042(c).

"(4) EMPLOYER.—Except to the extent provided in regulations, the term 'employer' includes any person treated as an employer under subsections (b), (c), (m), and (o) of section 414.

"(g) TERMINATION.—This section shall not apply to any sale after December 31, 1991."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to sales after February 26, 1987.

(2) PROVISIONS TAKING EFFECT AS IF INCLUDED IN THE TAX REFORM ACT OF 1986.—The following provisions shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986:

(A) Section 2057(f)(2) of the Internal Revenue Code of 1986, as added by this section.

(B) The repeal of the requirement that a sale be made by the executor of an estate to qualify for purposes of section 2057 of such Code.

(3) DIRECT OWNERSHIP REQUIREMENT.—If the requirements of section 2057(d)(1)(B) of such Code (as modified by section 2057(d)(2) of such Code), as in effect after the amendments made by this section, are met with respect to any employer securities sold after October 22, 1986, and before February 27, 1987, such securities shall be treated as having been directly owned by the decedent for purposes of section 2057 of such Code, as in effect before such amendments.

(4) REDUCTION FOR SALES ON OR BEFORE FEBRUARY 26, 1987.—In applying the limitations of subsection (b) of section 2057 of such Code to sales after February 26, 1987, there shall be taken into account sales on or before February 26, 1987, to which section 2057 of such Code applied.

SEC. 10413. EXCISE TAX ON PLANS OR COOPERATIVES DISPOSING OF EMPLOYER SECURITIES FOR WHICH ESTATE TAX DEDUCTION WAS ALLOWED.

(a) IN GENERAL.—Chapter 43 (relating to excise taxes on qualified pension, etc., plans) is amended by inserting after section 4978 the following new section:

"SEC. 4978A. TAX ON CERTAIN DISPOSITIONS OF EMPLOYER SECURITIES TO WHICH SECTION 2057 APPLIED.

"(a) IMPOSITION OF TAX.—In the case of a taxable event involving qualified employer securities held by an employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax equal to the amount determined under subsection (b).

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be equal to 30 percent of—

"(A) the amount realized on the disposition in the case of a taxable event described in paragraph (1) or (2) of subsection (c), or

"(B) the amount repaid on the loan in the case of a taxable event described in paragraph (3) of subsection (c).

"(2) DISPOSITIONS OTHER THAN SALES OR EXCHANGES.—For purposes of paragraph (1), in the case of a disposition of employer securities which is not a sale or exchange, the amount realized on such disposition shall be the fair market value of such employer securities at the time of disposition.

"(c) TAXABLE EVENT.—For purposes of this section, the term 'taxable event' means the following:

"(1) DISPOSITION WITHIN 3 YEARS OF ACQUISITION.—Any disposition of employer securities by an employee stock ownership plan or eligible worker-owned cooperative within 3 years after such plan or cooperative acquired qualified employer securities.

"(2) STOCKS DISPOSED OF BEFORE ALLOCATION.—Any disposition of qualified employer securities to which paragraph (1) does not apply if—

"(A) such disposition occurs before such securities are allocated to accounts of participants or their beneficiaries, and

"(B) the proceeds from such disposition are not so allocated.

"(3) USE OF ASSETS TO REPAY ACQUISITION LOANS.—The payment by an employee stock ownership plan of any portion of any loan used to acquire employer securities from transferred assets (within the meaning of section 2057(c)(2)(B)).

"(d) ORDERING RULES.—For purposes of this section and section 4978, any disposition of employer securities shall be treated as having been made in the following order:

"(1) First, from qualified employer securities acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(2) Second, from qualified employer securities acquired before such 3-year period unless such securities (or the proceeds from such disposition) have been allocated to accounts of participants or their beneficiaries.

"(3) Third, from qualified securities (within the meaning of section 4978(e)(2)) to which section 1042 applied acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(4) Finally, from any other employer securities.

In the case of a disposition to which section 4978(d) or subsection (e) applies, the disposition of employer securities shall be treated as having been made in the opposite order of the preceding sentence.

"(e) SECTION NOT TO APPLY TO CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—This section shall not apply to any disposition described in paragraph (1) or (3) of section 4978(d).

"(2) CERTAIN REORGANIZATIONS.—For purposes of this section, any exchange of qualified employer securities for employer securities of another corporation in any reorganization described in section 368(a)(1) shall not be treated as a disposition, but the employer securities which were received shall be treated—

"(A) as qualified employer securities of the plan or cooperative, and

"(B) as having been held by the plan or cooperative during the period the qualified employer securities were held.

"(3) DISPOSITION TO MEET DIVERSIFICATION REQUIREMENTS.—Any disposition which is made to meet the requirements of section 401(a)(28) shall not be treated as a disposition.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TERMS USED IN SECTION 2057.—Any term used in this section which is used in section 2057 shall have the meaning given such term by section 2057.

"(2) QUALIFIED EMPLOYER SECURITIES.—The term 'qualified employer securities' has the meaning given such term by section 2057, except that such term shall include employer securities sold before February 27, 1987, for which a deduction was allowed under section 2057.

"(3) DISPOSITION.—The term 'disposition' includes any distribution.

"(4) LIABILITY FOR PAYMENT OF TAXES.—The tax imposed by this section shall be paid by—

"(A) the employer, or

"(B) the eligible worker-owned cooperative,

which made the written statement described in section 2057(e)."

(b) CONFORMING AMENDMENTS.—

(1) Section 4978(b)(2) is amended by striking out the parenthetical and inserting in lieu thereof "(determined as if such securities were disposed of in the order described in section 4978A(e))".

(2) The table of sections for chapter 43 is amended by inserting after the item relating to section 4978 the following new item:

"Sec. 4978A. Tax on certain dispositions of employer securities to which section 2057 applied."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable events (within the meaning of section 4978A(c) of

the Internal Revenue Code of 1986) occurring after February 26, 1987.

Subtitle E—Provisions Relating to Excise Taxes and User Fees

PART I—EXCISE TAXES

SEC. 10501. EXTENSION OF TELEPHONE EXCISE TAX.

Paragraph (2) of section 4251(b) (relating to applicable percentage) is amended to read as follows:

> *"(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means 3 percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero."*

SEC. 10502. DIESEL FUEL AND AVIATION FUEL TAXES IMPOSED AT WHOLESALE LEVEL.

(a) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by inserting after subpart A the following new subpart:

"Subpart B—Diesel Fuel and Aviation Fuel

"SEC. 4091. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed a tax on the sale of any taxable fuel by the producer or the importer thereof or by any producer of a taxable fuel.

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) shall be the sum of—

"(A)(i) the Highway Trust Fund financing rate in the case of diesel fuel, and

"(ii) the Airport and Airway Trust Fund financing rate in the case of aviation fuel, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate in the case of any taxable fuel.

"(2) HIGHWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), except as provided in subsection (c), the Highway Trust Fund financing rate is 15 cents per gallon.

"(3) AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Airport and Airway Trust Fund financing rate is 14 cents per gallon.

"(4) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

"(5) TERMINATION OF RATES.—

"(A) The Highway Trust Fund financing rate shall not apply on and after October 1, 1993.

"(B) The Airport and Airway Trust Fund financing rate shall not apply on and after January 1, 1988.

"(C) The Leaking Underground Storage Tank Trust Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) REDUCED RATE OF TAX FOR DIESEL FUEL IN ALCOHOL MIXTURE, ETC.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—The Highway Trust Fund financing rate shall be—

"(A) 9 cents per gallon in the case of the sale of any mixture of diesel fuel if—

"(i) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(ii) the diesel fuel in such mixture was not taxed under subparagraph (B), and

"(B) 10 cents per gallon in the case of the sale of diesel fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

"(2) LATER SEPARATION.—If any person separates the diesel fuel from a mixture of the diesel fuel and alcohol on which tax was imposed under subsection (a) at a Highway Trust Fund financing rate equivalent to 9 cents a gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such diesel fuel. The amount of tax imposed on any sale of such diesel fuel by such person shall be 5 cents per gallon.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 1993.

"(d) EXEMPTION FROM TAX FOR AVIATION FUEL IN ALCOHOL MIXTURE, ETC.—

"(1) IN GENERAL.—The Airport and Airway Trust Fund financing rate shall not apply to the sale of—

"(A) any mixture of aviation fuel at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)), or

"(B) any aviation fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

"(2) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which the Airport and Airway Trust Fund financing rate did not apply by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(2)), such person shall be treated as the producer of such aviation fuel.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 1993.

"SEC. 4092. DEFINITIONS.

"(a) TAXABLE FUEL.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxable fuel' means—

"(A) diesel fuel, and

"(B) aviation fuel.

"(2) DIESEL FUEL.—The term 'diesel fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

"(3) AVIATION FUEL.—The term 'aviation fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in an aircraft.

"(b) PRODUCER.—For purposes of this subpart—

"(1) CERTAIN PERSONS TREATED AS PRODUCERS.—

"(A) IN GENERAL.—The term 'producer' includes any person described in subparagraph (B) who elects to register under section 4101 with respect to the tax imposed by section 4091.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a refiner, compounder, blender, or wholesale distributor of a taxable fuel, or

"(ii) a dealer selling any taxable fuel exclusively to producers of such taxable fuel.

"(C) TAX-FREE PURCHASERS TREATED AS PRODUCERS.—Any person to whom any taxable fuel is sold tax-free under this subpart shall be treated as the producer of such fuel.

"(2) WHOLESALE DISTRIBUTOR.—For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells a taxable fuel to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks. Such term does not include any person who (excluding the term 'wholesale distributor' from paragraph (1)) is a producer or importer.

"SEC. 4093. EXEMPTIONS; SPECIAL RULE.

"(a) HEATING OIL.—The tax imposed by section 4091 shall not apply in the case of sales of any taxable fuel which the Secretary determines is destined for use as heating oil.

"(b) SALES TO PRODUCER.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply in the case of sales of a taxable fuel to a producer of such fuel.

"(c) AUTHORITY TO EXEMPT CERTAIN OTHER USES.—Subject to such terms and conditions as the Secretary may provide (including the application of section 4101), the Secretary may by regulation provide that—

"(1) the Highway Trust Fund financing rate under section 4091 shall not apply to diesel fuel sold for use by any purchaser as a fuel in a diesel-powered train,

"(2) the Airport and Airway Trust Fund financing rate under section 4091 shall not apply to aviation fuel sold for use by any purchaser as a fuel in an aircraft not in noncommercial aviation (as defined in section 4041(c)(4)),

"(3) the tax imposed by section 4091 shall not apply to taxable fuel sold for use by any purchaser other than as a motor fuel, and

"(4) the tax imposed by section 4091 shall not apply to taxable fuel sold for the exclusive use of any State, any political subdivision of a State, or the District of Columbia.

"(d) SPECIAL ADMINISTRATIVE RULES.—The Secretary may require—

"(1) information reporting by each remitter of the tax imposed by section 4091, and

"(2) information reporting by, and registration of, such other persons as the Secretary deems necessary to carry out this subpart.

"(e) CROSS REFERENCES.—

"(1) For imposition of tax where certain uses of diesel fuel or aviation fuel occur before imposition of tax by section 4091, see subsections (a)(1) and (c)(1) of section 4041.

"(2) For provisions allowing a credit or refund for fuel not used for certain taxable purposes, see section 6427."

(b) RETAIL DIESEL FUEL AND AVIATION FUEL TAXES TO BE RESIDUAL TAXES.—

(1) Paragraph (1) of section 4041(a) is amended—

(A) by striking out "DIESEL FUEL" in the heading and inserting in lieu thereof "TAX ON DIESEL FUEL WHERE NO TAX IMPOSED ON FUEL UNDER SECTION 4091", and

(B) by adding at the end thereof the following new sentence:

"No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(2) Paragraph (1) of section 4041(c) is amended—

(A) by striking out "IN GENERAL" in the heading and inserting in lieu thereof "TAX ON NONGASOLINE FUELS WHERE NO TAX IMPOSED ON FUEL UNDER SECTION 4091", and

(B) by adding at the end thereof the following new sentence:

"No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(3) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) TAX ON SALES AND USES SUBJECT TO TAX UNDER SUBSECTION (a).—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cent a gallon on the sale or use of any liquid (other than liquefied petroleum gas) if tax is imposed by subsection (a) on such sale or use.

"(2) TAX ON DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than a product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

"(3) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c), there is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(4) Subsection (n) of section 4041 is hereby repealed.

(c) AMENDMENTS RELATING TO CREDITS AND REFUNDS.—

(1) Section 6427 is amended by redesignating subsections (l) through (p) as subsections (m) through (q), respectively, and by inserting after subsection (k) the following new subsection:

"(l) NONTAXABLE USES OF DIESEL FUEL AND AVIATION FUEL TAXED UNDER SECTION 4091.—

"(1) IN GENERAL.—Except as provided in subsection (k) and in paragraph (3) of this subsection, if any fuel on which tax has been imposed by section 4091 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4091.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means, with respect to any fuel, any use of such fuel if such use is exempt from the taxes imposed by subsections (a)(1) and (c)(1) of section 4041 (other than by reason of the imposition of tax on any sale thereof).

"(3) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING TAX.—Paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section in the case of—

"(A) fuel used in a diesel-powered train, and

"(B) fuel used in any aircraft."

(2) Paragraph (1) of section 6427(b) is amended—

(A) by striking out "subsection (a) of section 4041" the first place it appears and inserting in lieu thereof "section 4041(a) or 4091", and

(B) by striking out "subsection (a) of section 4041" the second place it appears and inserting in lieu thereof "section 4041(a) or 4091, as the case may be".

(3) Subparagraph (B) of section 6427(e)(1) is amended by inserting "or 4091" after "section 4041".

(4) Subsection (f) of section 6427 is amended to read as follows:

"(f) GASOLINE, DIESEL FUEL, AND AVIATION FUEL USED TO PRODUCE CERTAIN ALCOHOL FUELS.—Except as provided in subsection (k)—

"(1) GASOLINE AND DIESEL FUELS.—

"(A) IN GENERAL.—If any gasoline or diesel fuel on which tax was imposed by section 4081 or 4091 at the regular

Highway Trust Fund financing rate is used by any person in producing a mixture described in section 4081(c) or in section 4091(c)(1)(A) (as the case may be) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular Highway Trust Fund financing rate over the incentive Highway Trust Fund Financing rate with respect to such fuel.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) REGULAR HIGHWAY TRUST FUND FINANCING RATE.—The term 'regular Highway Trust Fund financing rate' means—

"(I) 9 cents per gallon in the case of gasoline, and

"(II) 15 cents per gallon in the case of diesel fuel.

"(ii) INCENTIVE HIGHWAY TRUST FUND FINANCING RATE.—The term 'incentive Highway Trust Fund Financing rate' means—

"(I) 3 1/3 cents per gallon in the case of gasoline, and

"(II) 10 cents per gallon in the case of diesel fuel.

"(C) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under subparagraph (A) with respect to any gasoline or diesel fuel with respect to which an amount is payable under subsection (d), (e), or (l) of this section or under section 6420 or 6421.

"(2) AVIATION FUEL.—If any aviation fuel on which tax was imposed by section 4091 is used by any person in producing a mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of tax (attributable to the Airport and Airway Trust Fund financing rate) imposed on such fuel under section 4091.

"(3) TERMINATION.—Paragraphs (1) and (2) shall not apply with respect to any mixture sold or used after September 30, 1993."

(5)(A) Paragraph (1) of section 6427(i) is amended by striking out "or (h)" and inserting in lieu thereof "(h), or (l)".

(B) Clause (i) of section 6427(i)(2)(A) is amended by striking out "and (h)" and inserting in lieu thereof "(h), and (l)".

(6) Subsection (o) of section 6427 (as redesignated by paragraph (1)) is amended to read as follows:

"(o) TERMINATION OF CERTAIN PROVISIONS.—Except with respect to taxes imposed by section 4041(d) and sections 4081 and 4091 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections (a), (b), (c), (d), (g), (h), and (l) shall only apply with respect to fuels purchased before October 1, 1993."

(d) OTHER CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 40 is amended by striking out "or section 4081(c)" and inserting in lieu thereof ", section 4081(c), or section 4091(c)".

(2) Subparagraph (B) of section 4081(e)(2), as amended by section 1703 of the Tax Reform Act of 1986, is amended by striking

out "net revenues" and all that follows and inserting in lieu thereof the following: "net revenues are at least $500,000,000 from taxes imposed by section 4041(d) and taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091."

(3) Subsection (a) of section 4101, as amended by section 1703 of the Tax Reform Act of 1986, is amended by inserting "or 4091" after "section 4081".

(4) Subsection (a) of section 4221 is amended by striking out "(other than" and all that follows through "sale by the manufacturer" and inserting in lieu thereof "(other than under section 4121, 4081, or 4091) on the sale by the manufacturer".

(5) Section 6206 is amended by striking out "or 4041" and inserting in lieu thereof "or 4041 or 4091".

(6) Paragraph (2) of section 6416(b) is amended—

(A) by striking out "(other than coal taxable under section 4121)", and

(B) by adding at the end thereof the following new sentence: "This paragraph shall not apply in the case of any tax paid under section 4091 or 4121."

(7) Subparagraph (A) of section 6416(b)(3) is amended by inserting "and other than any fuel taxable under section 4091" after "section 4081".

(8) Subparagraph (B) of section 6416(b)(3) is amended by striking out ", such gasoline" and inserting in lieu thereof "or any fuel taxable under section 4091, such gasoline or fuel".

(9) Subparagraph (C) of section 6421(e)(2) is hereby repealed.

(10) The subsection (j) of section 6421 relating to cross references is amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4), as paragraphs (1), (2), and (3), respectively.

(11) Section 6652 is amended by striking out the subsection (j) added by section 1702(b) of the Tax Reform Act of 1986 and by redesignating subsections (l) and (m) as subsections (k) and (l), respectively.

(12) Subsection (b) of section 9502 is amended by striking out "and" at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) amounts determined by the Secretary to be equivalent to the taxes received in the Treasury before January 1, 1988, under section 4091 (to the extent attributable to the Airport and Airway Trust Fund financing rate), and".

(13) Paragraph (1) of section 9503(b) is amended by striking out subparagraph (F) and inserting in lieu thereof the following:

"(F) section 4091 (relating to tax on diesel fuel), and".

(14) Paragraph (4) of section 9503(b) is amended to read as follows:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2)—

"(A) there shall not be taken into account the taxes imposed by sections 4041(d), and

"(B) there shall be taken into account the taxes imposed by sections 4081 and 4091 only to the extent attributable to the Highway Trust Fund financing rates under such sections."

(15) Paragraph (2) of section 9503(e) is amended—

(A) by striking out "sections 4041 and 4081" and inserting in lieu thereof "sections 4041, 4081, and 4091", and

(B) by striking out "section 4041 or 4081" and inserting in lieu thereof "section 4041, 4081, or 4091".

(16) Subsection (b) of section 9508 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) taxes received in the Treasury under section 4091 (relating to tax on diesel fuel and aviation fuel) to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such section,".

(17) Subparagraph (A) of section 9508(c)(2) is amended by striking out clause (ii) and all that follows and inserting in lieu thereof the following:

"(ii) credits allowed under section 34,

with respect to the taxes imposed by section 4041(d) or by sections 4081 and 4091 (to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such sections)."

(18) The table of subparts for part III of subchapter A of chapter 32 is amended by inserting after the item relating to subpart A the following new item:

"Subpart B. Diesel fuel and aviation fuel."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after March 31, 1988.

(f) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—On any taxable fuel which on April 1, 1988, is held by a taxable person, there is hereby imposed a floor stocks tax at the rate of tax which would be imposed if such fuel were sold on such date in a sale subject to tax under section 4091 of the Internal Revenue Code of 1986 (as added by this section).

(2) OVERPAYMENT OF FLOOR STOCKS TAXES, ETC.—Sections 6416 and 6427 of such Code shall apply in respect of the floor stocks taxes imposed by this subsection so as to entitle, subject to all provisions of such sections, any person paying such floor stocks taxes to a credit or refund thereof for any reason specified in such sections. All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code (as so added) shall apply to the floor stocks taxes imposed by this subsection.

(3) DUE DATE OF TAX.—The taxes imposed by this subsection shall be paid before June 16, 1988.

(4) DEFINITIONS.—For purposes of this subsection—

(A) TAXABLE FUEL.—

(i) IN GENERAL.—The term "taxable fuel" means any taxable fuel (as defined in section 4092 of such Code,

as added by this section) on which no tax has been imposed under section 4041 of such Code.

(ii) EXCEPTION FOR FUEL HELD FOR NONTAXABLE USES.—The term 'taxable fuel' shall not include fuel held exclusively for any use which is a nontaxable use (as defined in section 6427(l) of such Code, as added by this section).

(B) TAXABLE PERSON.—The term "taxable person" means any person other than a producer (as defined in section 4092 of such Code, as so added) or importer of taxable fuel.

(C) HELD BY A TAXABLE PERSON.—An article shall be treated as held by a person if title thereto has passed to such person (whether or not delivery to such person has been made).

(5) SPECIAL RULE FOR FUEL HELD FOR USE IN TRAINS AND COMMERCIAL AIRCRAFT.—Only the Leaking Underground Storage Tank Trust Fund financing rate under section 4091 of such Code shall apply for purposes of this subsection with respect to—

(A) diesel fuel held exclusively for use as a fuel in a diesel-powered train, and

(B) aviation fuel held exclusively for use as a fuel in an aircraft not in noncommercial aviation (as defined in section 4041(c)(4) of such Code).

(6) TRANSFER OF FLOOR STOCK REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4091 of such Code (as so added).

(g) COORDINATION WITH AIRPORT AND AIRWAY SAFETY AND CAPACITY EXPANSION ACT OF 1987.—If the Airport and Airway Safety and Capacity Expansion Act of 1987 is enacted, effective on December 31, 1987, sections 4091(b)(5)(B) and 9502(b)(3) of such Code (as added by this section) are each amended by striking out "January 1, 1988" and inserting in lieu thereof "January 1, 1991", and.

SEC. 10503. EXTENSION OF TEMPORARY INCREASE IN AMOUNT OF TAX IMPOSED ON COAL PRODUCERS.

Subparagraph (A) of section 4121(e)(2) (relating to temporary increase termination date) is amended by striking out "January 1, 1996" and inserting in lieu thereof "January 1, 2014".

PART II—TAX-RELATED USER FEES

SEC. 10511. FEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate (hereinafter in this section referred to as the "Secretary") shall establish a program requiring the payment of user fees for requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters and for similar requests.

(b) PROGRAM CRITERIA.—

(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

(A) shall vary according to categories (or subcategories) established by the Secretary,

(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

(C) shall be payable in advance.

(2) EXEMPTIONS, ETC.—The Secretary shall provide for such exemptions (and reduced fees) under such program as he determines to be appropriate.

(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

Category	*Average Fee*
Employee plan ruling and opinion	*$250*
Exempt organization ruling	*$350*
Employee plan determination	*$300*
Exempt organization determination	*$275*
Chief counsel ruling	*$200.*

(c) APPLICATION OF SECTION.—Subsection (a) shall apply with respect to requests made on or after the 1st day of the second calendar month beginning after the date of the enactment of this Act and before September 30, 1990.

SEC. 10512. OCCUPATIONAL TAXES RELATING TO ALCOHOL, TOBACCO, AND FIREARMS.

(a) OCCUPATIONAL TAXES ON DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, BREWERIES, ETC.—

(1) DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, ETC.—

(A) IN GENERAL.—Part II of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer) is amended by inserting before subpart B the following new subpart:

"Subpart A—Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Etc.

"Sec. 5081. Imposition and rate of tax.

"SEC. 5081. IMPOSITION AND RATE OF TAX.

"(a) GENERAL RULE.—Every proprietor of—

"(1) a distilled spirits plant,

"(2) a bonded wine cellar,

"(3) a bonded wine warehouse, or

"(4) a taxpaid wine bottling house,

shall pay a tax of $1,000 per year in respect of each such premises.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(B) TECHNICAL AMENDMENTS.—

(i) Subsection (a) of section 5691 is amended by striking out "the business of a brewer, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, or limited retail dealer," and inserting in lieu thereof "a business subject to a special tax imposed by part II of subchapter A or section 5276 (relating to occupational taxes)".

*(ii) The section heading of section 5691 is amended by striking out "**RELATING TO LIQUORS**"*

(iii) The table of sections for part V of subchapter J of chapter 51 is amended by striking out "relating to liquors" in the item relating to section 5691.

(C) CLERICAL AMENDMENT.—The table of subparts for part II of subchapter A of chapter 51 is amended by inserting before the item relating to subpart B the following new item:

"Subpart A. Proprietors of distilled spirits plants, bonded wine cellars, etc."

(2) BREWERIES.—Section 5091 (relating to imposition and rate of tax on brewers) is amended to read as follows:

"SEC. 5091. IMPOSITION AND RATE OF TAX.

"(a) GENERAL RULE.—Every brewer shall pay a tax of $1,000 per year in respect of each brewery.

"(b) REDUCED RATES FOR SMALL BREWERS.—Rules similar to the rules of section 5081(b) shall apply for purposes of subsection (a)."

(b) WHOLESALE DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5111 (relating to imposition and rate of tax on wholesale dealers) is amended by striking out "$255" and inserting in lieu thereof "$500".

(2) BEER.—Subsection (b) of section 5111 is amended by striking out "$123" and inserting in lieu thereof "$500".

(c) RETAIL DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5121 (relating to imposition and rate of tax on retail dealers) is amended by striking out "$54" and inserting in lieu thereof "$250".

(2) BEER.—Subsection (b) of section 5121 is amended by striking out "$24" and inserting in lieu thereof "$250".

(3) REPEAL OF TAX ON LIMITED RETAIL DEALERS.—Subsection (c) of section 5121 is hereby repealed.

(d) TAX ON NONBEVERAGE DOMESTIC DRAWBACK.—Subsection (b) of section 5131 (relating to eligibility and rate of tax) is amended to read as follows:

"(b) RATE OF TAX.—The special tax imposed by subsection (a) shall be $500 per year."

(e) TAX ON INDUSTRIAL USE OF DISTILLED SPIRITS.—

(1) IN GENERAL.—Subchapter D of chapter 51 (relating to industrial use of distilled spirits) is amended by adding at the end thereof the following new section:

"SEC. 5276. OCCUPATIONAL TAX.

"(a) GENERAL RULE.—A permit issued under section 5271 shall not be valid with respect to acts conducted at any place unless the person holding such permit pays a special tax of $250 with respect to such place.

"(b) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A shall apply for purposes of this section."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end thereof the following new item:

"Sec. 5276. Occupational tax."

(f) TOBACCO.—

(1) IN GENERAL.—Chapter 52 (relating to cigars, cigarettes, smokeless tobacco and cigarette papers and tubes) is amended by redesignating subchapters D, E, and F as subchapters E, F, and G, respectively, and by inserting after subchapter C the following new subchapter:

"Subchapter D—Occupational Tax

"Sec. 5731. Imposition and rate of tax.

"SEC. 5731. IMPOSITION AND RATE OF TAX.

"(a) GENERAL RULE.—Every person engaged in business as—

"(1) a manufacturer of tobacco products,

"(2) a manufacturer of cigarette papers and tubes, or

"(3) an export warehouse proprietor,

shall pay a tax of $1,000 per year in respect of each premises at which such business is carried on.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

"(c) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A of chapter 51 shall apply for purposes of this section.

"(d) PENALTY FOR FAILURE TO REGISTER.—Any person engaged in a business referred to in subsection (a) who willfully fails to pay the tax imposed by subsection (a) shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense."

(2) CLERICAL AMENDMENT.—The table of subchapters for chapter 52 is amended by redesignating the items relating to subchapters D, E, and F as items relating to subchapters E, F, and G, respectively, and by inserting after the item relating to subchapter C the following new item:

"Subchapter D. Occupational tax."

(g) FIREARMS.—

(1) IN GENERAL.—Section 5801 (relating to occupational taxes) is amended to read as follows:

"SEC. 5801. IMPOSITION OF TAX.

"(a) GENERAL RULE.—On 1st engaging in business and thereafter on or before July 1 of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

"(1) Importers and manufacturers: $1,000 a year or fraction thereof.

"(2) Dealers: $500 a year or fraction thereof.

"(b) REDUCED RATES OF TAX FOR SMALL IMPORTERS AND MANUFACTURERS.—

"(1) IN GENERAL.—Paragraph (1) of subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 53 is amended by striking out the item relating to section 5801 and inserting in lieu thereof the following new item:

"Sec. 5801. Imposition of tax."

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1988.

(2) ALL TAXPAYERS TREATED AS COMMENCING IN BUSINESS ON JANUARY 1, 1988.—

(A) IN GENERAL.—Any person engaged on January 1, 1988, in any trade or business which is subject to an occupational tax shall be treated for purposes of such tax as having 1st engaged in such trade or business on such date.

(B) LIMITATION ON AMOUNT OF TAX.—In the case of a taxpayer who paid an occupational tax in respect of any premises for any taxable period which began before January 1, 1988, and includes such date, the amount of the occupational tax imposed by reason of subparagraph (A) in respect of such premises shall not exceed an amount equal to 1/2 the excess (if any) of—

(i) the rate of such tax as in effect on January 1, 1988, over

(ii) the rate of such tax as in effect on December 31, 1987.

(C) OCCUPATIONAL TAX.—For purposes of this paragraph, the term "occupational tax" means any tax imposed under part II of subchapter A of chapter 51, section 5276, section

5731, or section 5801 of the Internal Revenue Code of 1986 (as amended by this section).

(D) DUE DATE OF TAX.—The amount of any tax required to be paid by reason of this paragraph shall be due on April 1, 1988.

Subtitle F—Other Revenue Provisions

PART I—TARGETED JOBS CREDIT

SEC. 10601. DENIAL OF TARGETED JOBS CREDIT FOR WAGES PAID DURING PERIOD OF LABOR DISPUTE.

(a) GENERAL RULE.—Subsection (c) of section 51 (defining wages) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) PAYMENTS FOR SERVICES DURING LABOR DISPUTES.—If—

"(A) the principal place of employment of an individual with the employer is at a plant or facility, and

"(B) there is a strike or lockout involving employees at such plant or facility,

the term 'wages' shall not include any amount paid or incurred by the employer to such individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of such strike or lockout."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid or incurred on or after January 1, 1987, for services rendered on or after such date.

PART II—TREATMENT OF CERTAIN ILLEGAL IRRIGATION SUBSIDIES

SEC. 10611. TREATMENT OF CERTAIN ILLEGAL IRRIGATION SUBSIDIES.

(a) GENERAL RULE.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end thereof the following new section:

"SEC. 90. ILLEGAL FEDERAL IRRIGATION SUBSIDIES.

"(a) GENERAL RULE.—Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.

"(b) ILLEGAL FEDERAL IRRIGATION SUBSIDY.—For purposes of this section—

"(1) IN GENERAL.—The term 'illegal federal irrigation subsidy' means the excess (if any) of—

"(A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over

"(B) the amount paid for such water.

"(2) FEDERAL IRRIGATION WATER.—The term 'Federal irrigation water' means any water made available for agricultural purposes from the operation of any reclamation or irrigation

project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982.

"(c) DENIAL OF DEDUCTION.—No deduction shall be allowed under this subtitle by reason of any inclusion in gross income under subsection (a)."

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 90. Federal irrigation subsidies."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to water delivered to the taxpayer in months beginning after the date of the enactment of this Act.

PART III—COMPLIANCE

SEC. 10621. STATE ESCHEAT LAWS NOT TO APPLY TO REFUNDS OF FEDERAL TAX.

(a) GENERAL RULE.—Subchapter A of chapter 65 (relating to procedure in general for abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6408. STATE ESCHEAT LAWS NOT TO APPLY.

"No overpayment of any tax imposed by this title shall be refunded (and no interest with respect to any such overpayment shall be paid) if the amount of such refund (or interest) would escheat to a State or would otherwise become the property of a State under any law relating to the disposition of unclaimed or abandoned property. No refund (or payment of interest) shall be made to the estate of any decedent unless it is affirmatively shown that such amount will not escheat to a State or otherwise become the property of a State under such a law."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6408. State escheat laws not to apply."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 10622. SENSE OF CONGRESS AS TO INCREASED INTERNAL REVENUE SERVICE FUNDING FOR TAXPAYER ASSISTANCE AND ENFORCEMENT.

(a) FINDINGS.—The Congress hereby finds that—

(1) the Internal Revenue Service estimates that the amount of taxes owed for 1986 will exceed the amount of taxes collected for such year by $100 billion;

(2) the current taxpayer compliance rate stands at 81.5 percent;

(3) the tax gap can be significantly reduced by enhancing taxpayer assistance services and enforcement; and

(4) the Appropriations Committee of the House of Representatives, in its fiscal year 1988 Internal Revenue Service appropriation, took a step in the direction of providing additional funding for taxpayer assistance and enforcement efforts.

(b) It is the sense of the Congress that:

(1) The Congress increase outlays for the Internal Revenue Service in fiscal year 1989 and fiscal year 1990 in the areas of taxpayer assistance and enforcement by $.7 billion in fiscal year 1989 for a revenue total of $3.2 billion and by $.8 billion in fiscal year 1990 for a revenue total of $4.4 billion. The net revenue increase would be $2.5 billion in fiscal year 1989 and $3.6 billion in fiscal year 1990, or a net revenue increase over the House Appropriations Committee recommendations of $.4 billion in fiscal year 1989 and $1.3 billion in fiscal year 1990.

(2) The Internal Revenue Service offer improved taxpayer assistance and enforcement efforts by using the aforementioned outlays in areas recommended by, or consistent with the recommendations of, the "Dorgan Task Force Report". Taxpayer assistance efforts would include providing expanded taxpayer education programs, instituting pilot programs of taxmobiles in rural areas, and upgrading the quality of telephone assistance. Taxpayer enforcement efforts would include raising the audit rate from 1.1 percent toward 2.5 percent, restoring resources to criminal investigations, and the collection of delinquent accounts.

(3) The Congress should undertake an experimental multiyear authorization and 2-year appropriation for the Internal Revenue Service consistent with the recommendations in Public Law 100-119, Sec. 201 (Increasing the Statutory Limit on the Public Debt).

(4) Increased funding should be provided for compilation and analysis of statistics of income and research.

The Internal Revenue Service must issue a report on the extent of the tax gap and the measures that could be undertaken to decrease the tax gap. The report must utilize more current data than has been utilized recently. The report must be issued by April 15, 1989. The Internal Revenue Service must also report annually on the improvements being made in the audit rate, taxpayer assistance, and enforcement efforts.

PART IV—Tax-Exempt Bond Provisions

SEC. 10631. ISSUES USED TO ACQUIRE NONGOVERNMENTAL OUTPUT PROPERTY.

(a) IN GENERAL.—Section 141 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN ISSUES USED TO ACQUIRE NONGOVERNMENTAL OUTPUT PROPERTY TREATED AS PRIVATE ACTIVITY BONDS.—

"(1) IN GENERAL.—For purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of—

"(A) 5 percent of such proceeds, or

"(B) $5,000,000.

"(2) NONGOVERNMENTAL OUTPUT PROPERTY.—Except as otherwise provided in this subsection, for purposes of paragraph (1),

the term 'nongovernmental output property' means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (within the meaning of subsection (b)(4)) (other than a facility for the furnishing of water). For purposes of the preceding sentence, use (or the holding for use) before October 14, 1987, shall not be taken into account.

"(3) EXCEPTION FOR PROPERTY ACQUIRED TO PROVIDE OUTPUT TO CERTAIN AREAS.—For purposes of pararaph (1)—

"(A) IN GENERAL.—The term 'nongovernmental output property' shall not include any property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in—

"(i) a qualified service area of the governmental unit acquiring the property, or

"(ii) a qualified annexed area of such unit.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) QUALIFIED SERVICE AREA.—The term 'qualified service area' means, with respect to the governmental unit acquiring the property, any area throughout which such unit provided (at all times during the 10-year period ending on the date such property is acquired by such unit) output of the same type as the output to be provided by such property. For purposes of the preceding sentence, the period before October 14, 1987, shall not be taken into account.

"(ii) QUALIFIED ANNEXED AREA.—The term 'qualified annexed area' means, with respect to the governmental unit acquiring the property, any area if—

"(I) such area is contiguous to, and annexed for general governmental purposes into, a qualified service area of such unit,

"(II) output from such property is made available to all members of the general public in the annexed area, and

"(III) the annexed area is not greater than 10 percent of such qualified service area.

"(C) LIMITATION ON SIZE OF ANNEXED AREA NOT TO APPLY WHERE OUTPUT CAPACITY DOES NOT INCREASE BY MORE THAN 10 PERCENT.—Subclause (III) of subparagraph (B)(ii) shall not apply to an annexation of an area by a governmental unit if the output capacity of the property acquired in connection with the annexation, when added to the output capacity of all other property which is not treated as nongovernmental output property by reason of subparagraph (A)(ii) with respect to such annexed area, does not exceed 10 percent of the output capacity of the property providing output of the same type to the qualified service area into which it is annexed.

"(D) RULES FOR DETERMINING RELATIVE SIZE, ETC.—For purposes of subparagraphs (B)(ii) and (C)—

"(i) The size of any qualified service area and the output capacity of property serving such area shall be determined as the close of the calendar year preceding

the calendar year in which the acquisition of nongovernmental output property or the annexation occurs.

"(ii) A qualified annexed area shall be treated as part of the qualified service area into which it is annexed for purposes of determining whether any other area annexed in a later year is a qualified annexed area.

"(4) EXCEPTION FOR PROPERTY CONVERTED TO NONOUTPUT USE.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'nongovernmental output property' shall not include any property which is to be converted to a use not in connection with an output facility.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any property which is part of the output function of a nuclear power facility.

"(5) SPECIAL RULES.—In the case of a bond which is a private activity bond solely by reason of this subsection—

"(A) subsections (c) and (d) of section 147 (relating to limitations on acquisition of land and existing property) shall not apply, and

"(B) paragraph (8) of section 142(a) shall be applied as if it did not contain 'local'.

"(6) TREATMENT OF JOINT ACTION AGENCIES.—With respect to nongovernmental output property acquired by a joint action agency the members of which are governmental units, this subsection shall be applied at the member level by treating each member as acquiring its proportionate share of such property."

(b) TECHNICAL AMENDMENT.—Subparagraph (A) of section 146(f)(5) is amended to read as follows:

"(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a),".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to bonds issued after October 13, 1987 (other than bonds issued to refund bonds issued on or before such date).

(2) BINDING AGREEMENTS.—The amendments made by this section shall not apply to bonds (other than advance refunding bonds) with respect to a facility acquired after October 13, 1987, pursuant to a binding contract entered into on or before such date.

(3) TRANSITIONAL RULE.—The amendments made by this section shall not apply to bonds issued—

(A) after October 13, 1987, by an authority created by a statute—

(i) approved by the State Governor on July 24, 1986, and

(ii) sections 1 through 10 of which became effective on January 15, 1987, and

(B) to provide facilities serving the area specified in such statute on the date of its enactment.

SEC. 10632. BONDS ISSUED BY INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Section 7871 is amended by adding at the end thereof the following new subsection:

"(e) ESSENTIAL GOVERNMENTAL FUNCTION.—For purposes of this section, the term 'essential governmental function' shall not include any function which is not customarily performed by State and local governments with general taxing powers."

(b) EXCEPTION FOR CERTAIN PRIVATE ACTIVITY BONDS.—

(1) IN GENERAL.—Subsection (c) of section 7871 (relating to additional requirements for tax-exempt bonds) is amended by adding at the end thereof the following new paragraph:

"(3) EXCEPTION FOR CERTAIN PRIVATE ACTIVITY BONDS.—

"(A) IN GENERAL.—In the case of an obligation to which this paragraph applies—

"(i) paragraph (2) shall not apply,

"(ii) such obligation shall be treated for purposes of this title as a qualified small issue bond, and

"(iii) section 146 shall not apply.

"(B) OBLIGATIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any obligation issued as part of an issue if—

"(i) 95 percent or more of the net proceeds of the issue are to be used for the acquisition, construction, reconstruction, or improvement of property which is of a character subject to the allowance for depreciation and which is part of a manufacturing facility (as defined in section 144(a)(12)(C)),

"(ii) such issue is issued by an Indian tribal government or a subdivision thereof,

"(iii) 95 percent or more of the net proceeds of the issue are to be used to finance property which—

"(I) is to be located on land which, throughout the 5-year period ending on the date of issuance of such issue, is part of the qualified Indian lands of the issuer, and

"(II) is to be owned and operated by such issuer,

"(iv) such obligation would not be a private activity bond without regard to subparagraph (C),

"(v) it is reasonably expected (at the time of issuance of the issue) that the employment requirement of subparagraph (D)(i) will be met with respect to the facility to be financed by the net proceeds of the issue, and

"(vi) no principal user of such facility will be a person (or group of persons) described in section 144(a)(6)(B).

For purposes of clause (iii), section 150(a)(5) shall apply.

"(C) PRIVATE ACTIVITY BOND RULES TO APPLY.—An obligation to which this paragraph applies (other than an obligation described in paragraph (1)) shall be treated for purposes of this title as a private activity bond.

"(D) EMPLOYMENT REQUIREMENTS.—

"(i) IN GENERAL.—The employment requirements of this subparagraph are met with respect to a facility financed by the net proceeds of an issue if, as of the close

of each calendar year in the testing period, the aggregate face amount of all outstanding tax-exempt private activity bonds issued to provide financing for the establishment which includes such facility is not more than 20 times greater than the aggregate wages (as defined by section 3121(a)) paid during the preceding calendar year to individuals (who are enrolled members of the Indian tribe of the issuer or the spouse of any such member) for services rendered at such establishment.

"(ii) FAILURE TO MEET REQUIREMENTS.—

"(I) IN GENERAL.—If, as of the close of any calendar year in the testing period, the requirements of this subparagraph are not met with respect to an establishment, section 103 shall cease to apply to interest received or accrued (on all private activity bonds issued to provide financing for the establishment) after the close of such calendar year.

"(II) EXCEPTION.—Subclause (I) shall not apply if the requirements of this subparagraph would be met if the aggregate face amount of all tax-exempt private activity bonds issued to provide financing for the establishment and outstanding at the close of the 90th day after the close of the calender year were substituted in clause (i) for such bonds outstanding at the close of such calendar year.

"(iii) TESTING PERIOD.—For purposes of this subparagraph, the term 'testing period' means, with respect to an issue, each calendar year which begins more than 2 years after the date of issuance of the issue (or, in the case of a refunding obligation, the date of issuance of the original issue).

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFIED INDIAN LANDS.—The term 'qualified Indian lands' means land which is held in trust by the United States for the benefit of an Indian tribe.

"(ii) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(iii) NET PROCEEDS.—The term 'net proceeds' has the meaning given such term by section 150(a)(3)."

(2) TECHNICAL AMENDMENT.—Paragraph (2) of section 7871(c) is amended by striking out "Subsection (a)" and inserting in lieu thereof "Except as provided in paragraph (3), subsection (a)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after October 13, 1987.

Subtitle G—Lobbying and Political Activities of Tax-Exempt Organizations

PART I—DISCLOSURE REQUIREMENTS

SEC. 10701. REQUIRED DISCLOSURE OF NONDEDUCTIBILITY OF CONTRIBUTIONS.

(a) GENERAL RULE.—Subchapter B of chapter 61 (relating to miscellaneous provisions) is amended by redesignating section 6113 as section 6114 and by inserting after section 6112 the following new section:

"SEC. 6113. DISCLOSURE OF NONDEDUCTIBILITY OF CONTRIBUTIONS.

"(a) GENERAL RULE.—Each fundraising solicitation by (or on behalf of) an organization to which this section applies shall contain an express statement (in a conspicuous and easily recognizable format) that contributions or gifts to such organization are not deductible as charitable contributions for Federal income tax purposes.

"(b) ORGANIZATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall apply to any organization which is not described in section 170(c) and which—

"(A) is described in subsection (c) (other than paragraph (1) thereof) or (d) of section 501 and exempt from taxation under section 501(a),

"(B) is a political organization (as defined in section 527(e)), or

"(C) was an organization described in subparagraph (A) or (B) at any time during the 5-year period ending on the date of the fundraising solicitation or is a successor to an organization so described at any time during such 5-year period.

"(2) EXCEPTION FOR SMALL ORGANIZATIONS.—

"(A) ANNUAL GROSS RECEIPTS DO NOT EXCEED $100,000.—This section shall not apply to any organization the gross receipts of which in each taxable year are normally not more than $100,000.

"(B) MULTIPLE ORGANIZATION RULE.—The Secretary may treat any group of 2 or more organizations as 1 organization for purposes of subparagraph (A) where necessary or appropriate to prevent the avoidance of this section through the use of multiple organizations.

"(3) SPECIAL RULE FOR CERTAIN FRATERNAL ORGANIZATIONS.—For purposes of paragraph (1), an organization described in section 170(c)(4) shall be treated as described in section 170(c) only with respect to solicitations for contributions or gifts which are to be used exclusively for purposes referred to in section 170(c)(4).

"(c) FUNDRAISING SOLICITATION.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'fundraising solicitation' means any solicitation of contributions or gifts which is made—

"(A) in written or printed form,
"(B) by television or radio, or
"(C) by telephone.

"(2) EXCEPTION FOR CERTAIN LETTERS OR CALLS.—The term 'fundraising solicitation' shall not include any letter or telephone call if such letter or call is not part of a coordinated fundraising campaign soliciting more than 10 persons during the calendar year."

(b) PENALTY.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6710. FAILURE TO DISCLOSE THAT CONTRIBUTIONS ARE NONDEDUCTIBLE.

"(a) IMPOSITION OF PENALTY.—If there is a failure to meet the requirement of section 6113 with respect to a fundraising solicitation by (or on behalf of) an organization to which section 6113 applies, such organization shall pay a penalty of $1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed $10,000.

"(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

"(c) $10,000 LIMITATION NOT TO APPLY WHERE INTENTIONAL DISREGARD.—If any failure to which subsection (a) applies is due to intentional disregard of the requirement of section 6113—

"(1) the penalty under subsection (a) for the day on which such failure occurred shall be the greater of—
"(A) $1,000, or
"(B) 50 percent of the aggregate cost of the solicitations which occurred on such day and with respect to which there was such a failure,

"(2) the $10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

"(3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).

"(d) DAY ON WHICH FAILURE OCCURS.—For purposes of this section, any failure to meet the requirement of section 6113 with respect to a solicitation—

"(1) by television or radio, shall be treated as occurring when the solicitation was telecast or broadcast,

"(2) by mail, shall be treated as occurring when the solicitation was mailed,

"(3) not by mail but in written or printed form, shall be treated as occurring when the solicitation was distributed, or

"(4) by telephone, shall be treated as occurring when the solicitation was made."

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 61 is amended by striking out the item relating to section 6113 and inserting in lieu thereof the following:

"Sec. 6113. Disclosure of nondeductibility of contributions.
"Sec. 6114. Cross reference."

(2) The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6710. Failure to disclose that contributions are nondeductible."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to solicitations after January 31, 1988.

SEC. 10702. PUBLIC INSPECTION OF ANNUAL RETURNS AND APPLICATIONS FOR TAX-EXEMPT STATUS.

(a) GENERAL RULE.—Section 6104 (relating to publicity of information required from certain tax-exempt organizations and certain trusts) is amended by adding at the end thereof the following new subsection:

"(e) PUBLIC INSPECTION OF CERTAIN ANNUAL RETURNS AND APPLICATIONS FOR EXEMPTION.—

"(1) ANNUAL RETURNS.—

"(A) IN GENERAL.—During the 3-year period beginning on the filing date, a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of the organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office.

"(B) ORGANIZATIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any organization which—

"(i) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), and

"(ii) is not a private foundation (within the meaning of section 509(a)).

"(C) NONDISCLOSURE OF CONTRIBUTORS.—Subparagraph (A) shall not require the disclosure of the name or address of any contributor to the organization.

"(D) FILING DATE.—For purposes of subparagraph (A), the term 'filing date' means the last day prescribed for filing the return under section 6033 (determined with regard to any extension of time for filing).

"(2) APPLICATION FOR EXEMPTION.—

"(A) IN GENERAL.—If—

"(i) an organization described in subsection (c) or (d) of section 501 is exempt from taxation under section 501(a), and

"(ii) such organization filed an application for recognition of exemption under section 501,

a copy of such application (together with a copy of any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application) shall be made available by the organization for inspection during regular business hours by any individual at the principal office of the organization and, if the organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office.

"(B) NONDISCLOSURE OF CERTAIN INFORMATION.—Subparagraph (A) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) to returns for years beginning after December 31, 1986, and

(2) on and after the 30th day after the date of the enactment of this Act in the case of applications submitted to the Internal Revenue Service—

(A) after July 15, 1987, or

(B) on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987.

SEC. 10703. ADDITIONAL INFORMATION REQUIRED ON ANNUAL RETURNS OF SECTION 501(c)(3) ORGANIZATIONS.

(a) GENERAL RULE.—Subsection (b) of section 6033 (relating to certain organizations described in section 503(c)(3)) is amended by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof a comma, and by inserting after paragraph (8) the following new paragraphs:

"(9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to prevent—

"(A) diversion of funds from the organization's exempt purpose, or

"(B) misallocation of revenues or expenses, and

"(10) such other information for purposes of carrying out the internal revenue laws as the Secretary may require."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to returns for years beginning after December 31, 1987.

SEC. 10704. PENALTIES.

(a) GENERAL RULE.—Subsection (c) of section 6652 (relating to returns by exempt organizations and by certain trusts) is amended to read as follows:

"(c) RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS.—

"(1) ANNUAL RETURNS UNDER SECTION 6033.—

"(A) PENALTY ON ORGANIZATION.—In the case of—

"(i) a failure to file a return required under section 6033 (relating to returns by exempt organizations) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), or

"(ii) a failure to include any of the information required to be shown on a return filed under section 6033 or to show the correct information,

there shall be paid by the exempt organization $10 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to

any 1 return shall not exceed the lesser of $5,000 or 5 percent of the gross receipts of the organization for the year.

"(B) MANAGERS.—

"(i) IN GENERAL.—The Secretary may make a written demand on any organization subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the return shall be filed (or the information furnished) for purposes of this subparagraph.

"(ii) FAILURE TO COMPLY WITH DEMAND.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by the person failing to so comply $10 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

"(C) PUBLIC INSPECTION OF ANNUAL RETURNS.—In the case of a failure to comply with the requirements of subsection (d) or (e)(1) of section 6104 (relating to public inspection of annual returns) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the person failing to meet such requirements $10 for each day during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

"(D) PUBLIC INSPECTION OF APPLICATIONS FOR EXEMPTION.—In the case of a failure to comply with the requirements of section 6104(e)(2) (relating to public inspection of applications for exemption) on the date and in the manner prescribed therefor, there shall be paid by the person failing to meet such requirements $10 for each day during which such failure continues.

"(2) RETURNS UNDER SECTION 6034 OR 6043(b).—

"(A) PENALTY ON ORGANIZATION OR TRUST.—In the case of a failure to file a return required under section 6034 (relating to returns by certain trusts) or section 6043(b) (relating to terminations, etc., of exempt organizations), on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the exempt organization or trust failing so to file $10 for each day during which such failure continues, but the total amount imposed under this subparagraph on any organization or trust for failure to file any 1 return shall not exceed $5,000.

"(B) MANAGERS.—The Secretary may make written demand on an organization or trust failing to file under subparagraph (A) specifying therein a reasonable future date by which such filing shall be made for purposes of this subparagraph. If such filing is not made on or before such date, there shall be paid by the person failing so to file $10 for each day after the expiration of the time speci-

fied in the written demand during which such failure continues, but the total amount imposed under this subparagraph on all persons for failure to file any 1 return shall not exceed $5,000.

"(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

"(4) OTHER SPECIAL RULES.—

"(A) TREATMENT AS TAX.—Any penalty imposed under this subsection shall be paid on notice and demand of the Secretary and in the same manner as tax.

"(B) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under this subsection for any penalty with respect to any failure, all such persons shall be jointly and severally liable with respect to such failure.

"(C) PERSON.—For purposes of this subsection, the term 'person' means any officer, director, trustee, employee, or other individual who is under a duty to perform the act in respect of which the violation occurs."

(b) WILLFUL FAILURE TO PERMIT PUBLIC INSPECTION.—

(1) IN GENERAL.—Section 6685 (relating to assessable penalty with respect to private foundation annual returns) is amended to read as follows:

"SEC. 6685. ASSESSABLE PENALTY WITH RESPECT TO PUBLIC INSPECTION REQUIREMENTS FOR CERTAIN TAX-EXEMPT ORGANIZATIONS.

"In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of subsection (d) or (e) of section 6104 and who fails to so comply with respect to any return or application, if such failure is willful, shall pay a penalty of $1,000 with respect to each such return or application."

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking out the item relating to section 6685 and inserting in lieu thereof the following:

"Sec. 6685. Assessable penalty with respect to public inspection requirements for certain tax-exempt organizations."

(c) FURNISHING FRAUDULENT INFORMATION.—Section 7207 (relating to fraudulent returns, statements, or other documents) is amended by striking out "subsection (d) of section 6104" and inserting in lieu thereof "subsection (d) or (e) of section 6104".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply—

(1) to returns for years beginning after December 31, 1986, and

(2) on and after the date of the enactment of this Act in the case of applications submitted to the Internal Revenue Service—

(A) after July 15, 1987, or

(B) on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987.

SEC. 10705. REQUIRED DISCLOSURE THAT CERTAIN INFORMATION OR SERVICE AVAILABLE FROM FEDERAL GOVERNMENT.

(a) GENERAL RULE.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6711. FAILURE BY TAX-EXEMPT ORGANIZATION TO DISCLOSE THAT CERTAIN INFORMATION OR SERVICE AVAILABLE FROM FEDERAL GOVERNMENT.

"(a) IMPOSITION OF PENALTY.—If—

"(1) a tax-exempt organization offers to sell (or solicits money for) specific information or a routine service for any individual which could be readily obtained by such individual free of charge (or for a nominal charge) from an agency of the Federal Government,

"(2) the tax-exempt organization, when making such offer or solicitation, fails to make an express statement (in a conspicuous and easily recognizable format) that the information or service can be so obtained, and

"(3) such failure is due to intentional disregard of the requirements of this subsection,

such organization shall pay a penalty determined under subsection (b) for each day on which such a failure occurred.

"(b) AMOUNT OF PENALTY.—The penalty under subsection (a) for any day on which a failure referred to in such subsection occurred shall be the greater of—

"(1) $1,000, or

"(2) 50 percent of the aggregate cost of the offers and solicitations referred to in subsection (a)(1) which occurred on such day and with respect to which there was such a failure.

"(c) DEFINITIONS.—For purposes of this section—

"(1) TAX-EXEMPT ORGANIZATION.—The term 'tax-exempt organization' means any organization which—

"(A) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), or

"(B) is a political organization (as defined in section 527(e)).

"(2) DAY ON WHICH FAILURE OCCURS.—The day on which any failure referred to in subsection (a) occurs shall be determined under rules similar to the rules of section 6710(d)."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6711. Failure by tax-exempt organization to disclose that certain information or service available from Federal Government."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers and solicitations after January 31, 1988.

PART II—POLITICAL ACTIVITIES

SEC. 10711. CLARIFICATION OF PROHIBITED POLITICAL ACTIVITIES.

(a) GENERAL RULE.—The following provisions are each amended by striking out "on behalf of any candidate" and inserting in lieu thereof "on behalf of (or in opposition to) any candidate":

(1) Section 170(c)(2)(D).
(2) Section 501(c)(3).
(3) Paragraphs (2) and (3) of section 2055(a).
(4) Clauses (ii) and (iii) of section 2106(a)(2)(A).
(5) Section 2522(a)(2).
(6) Paragraphs (2) and (3) of section 2522(b).

(b) STATUS AFTER DISQUALIFICATION BECAUSE OF POLITICAL ACTIVITIES.—

(1) IN GENERAL.—Paragraph (2) of section 504(a) (relating to status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying) is amended to read as follows:

"(2) is not an organization described in section 501(c)(3)—

"(A) by reason of carrying on propaganda, or otherwise attempting, to influence legislation, or

"(B) by reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office,".

(2) CLERICAL AMENDMENTS.—

*(A) The section heading for section 504 is amended by striking out "**SUBSTANTIAL LOBBYING**" and inserting in lieu thereof "**SUBSTANTIAL LOBBYING OR BECAUSE OF POLITICAL ACTIVITIES**".*

(B) The table of sections for part I of subchapter F of chapter 1 is amended by striking out "substantial lobbying" in the item relating to section 504 and inserting in lieu thereof "substantial lobbying or because of political activities".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to activities after the date of the enactment of this Act.

SEC. 10712. EXCISE TAXES ON POLITICAL EXPENDITURES BY SECTION 501(c)(3) ORGANIZATIONS.

(a) GENERAL RULE.—Chapter 42 (relating to excise taxes on private foundations and black lung benefit trusts) is amended by redesignating subchapter C as subchapter D and by inserting after subchapter B the following new subchapter:

"Subchapter C—Political Expenditures of Section 501(c)(3) Organizations

"Sec. 4955. Taxes on political expenditures of section 501(c)(3) organizations.

"SEC. 4955. TAXES ON POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.

"(a) INITIAL TAXES.—

"(1) ON THE ORGANIZATION.—There is hereby imposed on each political expenditure by a section 501(c)(3) organization a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the organization.

"(2) ON THE MANAGEMENT.—There is hereby imposed on the agreement of any organization manager to the making of any expenditure, knowing that it is a political expenditure, a tax equal to 2 1/2 percent of the amount thereof, unless such agree-

ment is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who agreed to the making of the expenditure.

"(b) ADDITIONAL TAXES.—

"(1) ON THE ORGANIZATION.—In any case in which an initial tax is imposed by subsection (a)(1) on a political expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the organization.

"(2) ON THE MANAGEMENT.—In any case in which an additional tax is imposed by paragraph (1), if an organization manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the political expenditure. The tax imposed by this paragraph shall be paid by any organization manager who refused to agree to part or all of the correction.

"(c) SPECIAL RULES.—For purposes of subsections (a) and (b)—

"(1) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under subsection (a)(2) or (b)(2) with respect to the making of a political expenditure, all such persons shall be jointly and severally liable under such subsection with respect to such expenditure.

"(2) LIMIT FOR MANAGEMENT.—With respect to any 1 political expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

"(d) POLITICAL EXPENDITURE.—For purposes of this section—

"(1) IN GENERAL.—The term 'political expenditure' means any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

"(2) CERTAIN OTHER EXPENDITURES INCLUDED.—In the case of an organization which is formed primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office (or which is effectively controlled by a candidate or prospective candidate and which is availed of primarily for such purposes), the term 'political expenditure' includes any of the following amounts paid or incurred by the organization:

"(A) Amounts paid or incurred to such individual for speeches or other services.

"(B) Travel expenses of such individual.

"(C) Expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual.

"(D) Expenses of advertising, publicity, and fundraising for such individual.

"(E) Any other expense which has the primary effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

"(e) COORDINATION WITH SECTION 4945.—If tax is imposed under this section with respect to any political expenditure, such expendi-

ture shall not be treated as a taxable expenditure for purposes of section 4945.

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) SECTION 501(C)(3) ORGANIZATION.—The term 'section 501(c)(3) organization' means any organization which (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a).

"(2) ORGANIZATION MANAGER.—The term 'organization manager' means—

"(A) any officer, director, or trustee of the organization (or individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization), and

"(B) with respect to any expenditure, any employee of the organization having authority or responsibility with respect to such expenditure.

"(3) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any political expenditure, recovering part or all of the expenditure to the extent recovery is possible, establishment of safeguards to prevent future political expenditures, and where full recovery is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

"(4) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any political expenditure, the period beginning with the date on which the political expenditure occurs and ending on the earlier of—

"(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

"(B) the date on which tax imposed by subsection (a)(1) is assessed."

(b) ABATEMENT OF FIRST TIER TAX IN CERTAIN CASES.—

(1) Section 4962 (relating to abatement of private foundation first tier taxes in certain cases) is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b) QUALIFIED FIRST TIER TAX.—For purposes of this section, the term 'qualified first tier tax' means any first tier tax imposed by subchapter A or C of this chapter, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).

"(c) SPECIAL RULE FOR TAX ON POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.—In the case of the tax imposed by section 4955(a), subsection (a)(1) shall be applied by substituting 'not willful and flagrant' for 'due to reasonable cause and not to willful neglect'."

(2) Subsection (a) of section 4962 is amended by striking out "any private foundation first tier tax" and inserting in lieu thereof "any qualified first tier tax".

(3) Subsections (a), (b), and (c) of section 4963 are each amended by striking out "4952," and inserting in lieu thereof "4952, 4955,".

*(4) The section heading for section 4962 is amended by striking out "**PRIVATE FOUNDATION**".*

(5) The table of sections for subchapter D of chapter 42 (as redesignated by this section) is amended by striking out "private foundation" in the item relating to section 4962.

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (e) of section 6213 is amended by striking out "4971" and inserting in lieu thereof "4955 (relating to taxes on political expenditures), 4971".

(2) Paragraph (1) of section 6501(l) is amended by striking out "plan, or trust" and inserting in lieu thereof "plan, trust, or other organization".

(3) Subsection (g) of section 6503 is amended by striking out "4951, 4952,".

(4) Section 6684 is amended by striking out "private foundations" and inserting in lieu thereof "private foundations and certain other tax-exempt organizations".

(5) Paragraphs (2) and (3) of section 7422(g) are each amended by striking out "4952," and inserting in lieu thereof "4952, 4955,".

(6) Subsection (b) of section 7454 is amended by striking out "the burden of proof" and inserting in lieu thereof "or whether an organization manager (as defined in section 4955(e)(2)) has 'knowingly' agreed to the making of a political expenditure (within the meaning of section 4955), the burden of proof".

*(7) The chapter heading for chapter 42 is amended by striking out "**BLACK LUNG BENEFIT TRUSTS**" and inserting in lieu thereof "**AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS**".*

(8) The table of chapters for subtitle D of such Code is amended by striking out "black lung benefit trusts" in the item relating to chapter 42 and inserting in lieu thereof "and certain other tax-exempt organizations".

(9) The table of subchapters for chapter 42 is amended by striking out the item relating to subchapter C and inserting in lieu thereof the following:

> *"Subchapter C. Political expenditures of section 501(c)(3) organizations.*
> *"Subchapter D. Abatement of first and second-tier taxes in certain cases."*

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 10713. ADDITIONAL ENFORCEMENT AUTHORITY IN THE CASE OF FLAGRANT POLITICAL EXPENDITURES.

(a) AUTHORITY TO ENJOIN FLAGRANT POLITICAL EXPENDITURES.—

(1) IN GENERAL.—Subchapter A of chapter 76 (relating to civil actions by the United States) is amended by redesignating section 7409 as section 7410 and by inserting after section 7408 the following new section:

"SEC. 7409. ACTION TO ENJOIN FLAGRANT POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.

"(a) AUTHORITY TO SEEK INJUNCTION.—

"(1) IN GENERAL.—If the requirements of paragraph (2) are met, a civil action in the name of the United States may be commenced at the request of the Secretary to enjoin any section

501(c)(3) organization from further making political expenditures and for such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3). Any action under this section shall be brought in the district court of the United States for the district in which such organization has its principal place of business or for any district in which it has made political expenditures. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such organization.

"(2) REQUIREMENTS.—An action may be brought under subsection (a) only if—

"(A) the Internal Revenue Service has notified the organization of its intention to seek an injunction under this section if the making of political expenditures does not immediately cease, and

"(B) the Commissioner of Internal Revenue has personally determined that—

"(i) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

"(ii) injunctive relief is appropriate to prevent future political expenditures.

"(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds on the basis of clear and convincing evidence that—

"(1) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

"(2) injunctive relief is appropriate to prevent future political expenditures,

the court may enjoin such organization from making political expenditures and may grant such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3).

"(c) DEFINITIONS.—For purposes of this section, the terms 'section 501(c)(3) organization' and 'political expenditures' have the respective meanings given to such terms by section 4955."

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 76 is amended by striking the item relating to section 7409 and inserting in lieu thereof the following:

"Sec. 7409. Action to enjoin flagrant political expenditures of section 501(c)(3) organizations.
"Sec. 7410. Cross references."

(b) AUTHORITY TO MAKE IMMEDIATE ASSESSMENTS.—

(1) IN GENERAL.—Part I of subchapter A of chapter 70 (relating to termination of taxable year) is amended by adding at the end thereof the following new section:

"SEC. 6852. TERMINATION ASSESSMENTS IN CASE OF FLAGRANT POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.

"(a) AUTHORITY TO MAKE.—

"(1) IN GENERAL.—If the Secretary finds that—

"(A) a section 501(c)(3) organization has made political expenditures, and

"(B) such expenditures constitute a flagrant violation of the prohibition against making political expenditures,

the Secretary shall immediately make a determination of any income tax payable by such organization for the current or immediately preceding taxable year, or both, and shall immediately make a determination of any tax payable under section 4955 by such organization or any manager thereof with respect to political expenditures during the current or preceding taxable year, or both. Notwithstanding any other provision of law, any such tax shall become immediately due and payable. The Secretary shall immediately assess the amount of tax so determined (together with all interest, additional amounts, and additions to the tax provided by law) for the current year or the preceding taxable year, or both, and shall cause notice of such determination and assessment to be given to the organization or any manager thereof, as the case may be, together with a demand for immediate payment of such tax.

"(2) COMPUTATION OF TAX.—In the case of a current taxable year, the Secretary shall determine the taxes for the period beginning on the 1st day of such current taxable year and ending on the date of the determination under paragraph (1) as though such period were a taxable year of the organization, and shall take into account any prior determination made under this subsection with respect to such current taxable year.

"(3) TREATMENT OF AMOUNTS COLLECTED.—Any amounts collected as a result of any assessments under this subsection shall, to the extent thereof, be treated as a payment of income tax for such taxable year, or tax under section 4955 with respect to the expenditure, as the case may be.

"(4) SECTION INAPPLICABLE TO ASSESSMENTS AFTER DUE DATE.—This section shall not authorize any assessment of tax for the preceding taxable year which is made after the due date of the organization's return for such taxable year (determined with regard to any extensions).

"(b) DEFINITIONS AND SPECIAL RULES.—

"(1) DEFINITIONS.—For purposes of this section, the terms 'section 501(c)(3) organization', 'political expenditure', and 'organization manager' have the respective meanings given to such terms by section 4955.

"(2) CERTAIN RULES MADE APPLICABLE.—The provisions of sections 6851(b), 6861(f), and 6861(g) shall apply with respect to any assessment made under subsection (a), except that determinations under section 6861(g) shall be made on the basis of whether the requirements of subsection (a)(1)(B) of this section are met in lieu of whether jeopardy exists."

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Clause (v) of section 6091(b)(1)(B) is amended by striking out "section 6851(a)" and inserting in lieu thereof "section 6851(a) or 6852(a)".

(B) Paragraph (1) of section 6211(b) is amended by striking out "section 6851" and inserting in lieu thereof "section 6851 or 6852".

(C) Paragraph (1) of section 6212(c) is amended by striking out "section 6851" and inserting in lieu thereof "section 6851 or 6852".

(D) Subsection (a) of section 6213 is amended by striking out "section 6851 or section 6861" and inserting in lieu thereof "section 6851, 6852, or 6861".

(E) Section 6863 is amended—

(i) by striking out "6851" in subsection (a) and inserting in lieu thereof "6851, 6852,",

(ii) by striking out "6851 or 6861" in subsection (b)(3)(A) and inserting in lieu thereof "6851, 6852, or 6861", and

(iii) by striking out "6851(a) or 6861(a)" and inserting in lieu thereof "6851(a), 6852(a), or 6861(a)".

(F) Section 7429 is amended—

(i) by striking out "6851(a)," each place it appears and inserting in lieu thereof "6851(a), 6852(a),", and

(ii) by striking out "6851," each place it appears and inserting in lieu thereof "6851, 6852,".

(G) Paragraph (3) of section 7611(i) is amended by striking out "or section 6861" and inserting in lieu thereof "section 6852 relating to termination assessments in case of political expenditures of section 501(c)(3), or 6861".

(H) The table of sections for part I of subchapter 70 is amended by adding at the end thereof the following new item:

"Sec. 6852. Termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 10714. TAX ON DISQUALIFYING LOBBYING EXPENDITURES.

(a) GENERAL RULE.—Chapter 41 (relating to public charities) is amended by adding at the end thereof the following new section:

"SEC. 4912. TAX ON DISQUALIFYING LOBBYING EXPENDITURES OF CERTAIN ORGANIZATIONS.

"(a) TAX ON ORGANIZATION.—If an organization to which this section applies is not described in section 501(c)(3) for any taxable year by reason of making lobbying expenditures, there is hereby imposed a tax on the lobbying expenditures of such organization for such taxable year equal to 5 percent of the amount of such expenditures. The tax imposed by this subsection shall be paid by the organization.

"(b) ON MANAGEMENT.—If tax is imposed under subsection (a) on the lobbying expenditures of any organization, there is hereby imposed on the agreement of any organization manager to the making of any such expenditures, knowing that such expenditures are likely to result in the organization not being described in section 501(c)(3),

a tax equal to 5 percent of the amount of such expenditures, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this subsection shall be paid by any manager who agreed to the making of the expenditures.

"(c) ORGANIZATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to any organization which was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3).

"(2) EXCEPTIONS.—This section shall not apply to any organization—

"(A) to which an election under section 501(h) applies,

"(B) which is a disqualified organization (within the meaning of section 501(h)(5)), or

"(C) which is a private foundation.

"(d) DEFINITIONS.—

"(1) LOBBYING EXPENDITURES.—The term 'lobbying expenditure' means any amount paid or incurred by the organization in carrying on propaganda, or otherwise attempting to influence legislation.

"(2) ORGANIZATION MANAGER.—The term 'organization manager' has the meaning given to such term by section 4955(f)(2).

"(3) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under subsection (b), all such persons shall be jointly and severally liable under such subsection."

(b) BURDEN OF PROOF.—Subsection (b) of section 7454 (as amended by this Act) is amended by striking out "the burden of proof" and inserting in lieu thereof ", or whether an organization manager (as defined in section 4912(d)(2)) has 'knowingly' agreed to the making of disqualifying lobbying expenditures within the meaning of section 4912(b), the burden of proof".

(c) TECHNICAL AMENDMENT.—Paragraph (1) of section 6501(l) is amended by striking out "by chapter 42 (other than section 4940)" and inserting in lieu thereof "by section 4912, by chapter 42 (other than section 4940),".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 41 is amended by adding at the end thereof the following new item:

"Sec. 4912. Tax on disqualifying lobbying expenditures of certain organizations."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

And the Senate agree to the same.

From the Committee on the Budget, for consideration of the House bill (except Title X), and the Senate amendment (except subtitle B of Title IV), and modifications committed to conference:

WILLIAM H. GRAY III,
BUTLER DERRICK,
MARTIN FROST,
ED JENKINS,
PAT WILLIAMS,
JAMES L. OBERSTAR,

WILLIAM F. GOODLING,

From the Committee on the Budget, for consideration of Title X of the House bill, and subtitle B of Title IV of the Senate amendment, and modifications committed to conference:

ED JENKINS,

From the Committee on Agriculture, for consideration of Title I and section 5003 of the House bill, and Title VIII and sections 2101 through 2113, 2301, 3001, and 9005 of the Senate amendment, and modifications committed to conference:

DE LA GARZA,
ED JONES,
CHARLIE ROSE,
JERRY HUCKABY,
DAN GLICKMAN,
CHARLIE STENHOLM,
LEON E. PANETTA,
ED MADIGAN,
ARLAN STANGELAND,
ROBERT F. SMITH,
TOM LEWIS,
WALLY HERGER,

From the Committee on Armed Services, for consideration of section 5001 of the Senate amendment, and modifications committed to conference:

LES ASPIN,
BEVERLY BYRON,
WILLIAM L. DICKINSON,

From the Committee on Banking, Finance and Urban Affairs, for consideration of Title II of the House bill, and sections 9006, 9007, 9010, and 9012 of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
FRANK ANNUNZIO,
MARY ROSE OAKAR,
ROBERT GARCIA,

From the Committee on Education and Labor, for consideration of Title III and subtitle E and section 9602 of Title IX of the House bill, and Part VI of Title IV, Title VI, and sections 4111, 4112, and 9008 of the Senate amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
(except for the pension provisions)
WILLIAM D. FORD,
(except for the pension provisions)
JOSEPH M. GAYDOS,
(except for the pension provisions)
WILLIAM L. CLAY,
(except for the pension provisions)

PAT WILLIAMS,
(except for the pension provisions)
DALE E. KILDEE,
(except for the pension provisions)

From the Committee on Banking, Finance, and Urban Affairs, for consideration of Title X of the Senate amendment, and modifications committed to conference:

FERNAND ST GERMAIN,
MARY ROSE OAKAR,
MAJOR R. OWENS,
(except for the pension provisions)
JAMES M. JEFFORDS,
WILLIAM F. GOODLING,
TOM COLEMAN,
MARGE ROUKEMA,

From the Committee on the Budget, for consideration of Title III and subtitle E of Title IX of the House bill, and part VI of subtitle B of title IV and subtitle A of Title VI of the Senate amendment:

DELBERT LATTA,
CONNIE MACK,
DENNY SMITH,

From the Committee on Energy and Commerce, for consideration of subtitles A, B, and C of Title V, parts 2 through 4 of subtitle C of Title IX, and sections 1052 and 9602 of the House bill, and subparts II through V of part A, subparts I (except sections 4086 and 4091) and II of part B of subtitle A of Title IV and sections 4001(q), 4002(b), 4002(c), 4051, 4111 through 4113, 9010, and 9011 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,
CARDISS COLLINS,
MIKE SYNAR,
RON WYDLER,
JIM SLATTERY,
BOB WHITTAKER,
(only for the Medicaid provisions)
TOM TAUKE,
(only for the Medicaid provisions)

From the Committee on Energy and Commerce, for consideration of sections 4301, 5001, and 6201 of the House bill, and subtitle A of Title II and Title III (except sections 3001 and 3003) of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHILIP R. SHARP,
AL SWIFT,

MICKEY LELAND,
JIM COOPER,
JIM SLATTERY,
NORMAN F. LENT,
CARLOS MOORHEAD,
BILL DANNEMEYER,
(only for section 6201 of the House bill)
JACK FIELDS,

From the Committee on Energy and Commerce, for consideration of section 9033 of the House bill, and section 4583 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
TOM LUKEN,
JAMES J. FLORIO,
BILLY TAUZIN,
JERRY SIKORSKI,
RICK BOUCHER,
JIM SLATTERY,
NORMAN F. LENT,
BOB WHITTAKER,
TOM TAUKE,
MIKE BILIRAKIS,

From the Committee on Interior and Insular Affairs, for consideration of sections 4301 and 5001 of the House bill, and sections 2001 through 2009 and 3010 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEO MILLER,
AUSTIN J. MURPHY,
BRUCE F. VENTO,
ED MARKEY,
(only for purposes of NRC user fees)
NICK RAHALL,
(only for purposes of NRC user fees)
DON YOUNG,
MANUEL LUJAN, Jr.,
ROBERT J. LAGOMARSINO,
RON MARLENEE,

From the Committee on Interior and Insular Affairs, for consideration of sections 5002 through 5004 of the House bill, and sections 2101 through 2113 and 9009 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEORGE MILLER,
PHILIP R. SHARP,
ED MARKEY,
AUSTIN J. MURPHY,
NICK RAHALL,
DON YOUNG,
MANUEL LUJAN, Jr.,

ROBERT J. LAGOMARSINO,
RON MARLENEE,

From the Committee on Interior and Insular Affairs, for consideration of section 5005 of the House bill, and sections 2201 through 2203 and 2301 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEO MILLER,
PHILIP R. SHARP,
ED MARKEY,
SAM GEJDENSON,
BRUCE F. VENTO,
DON YOUNG,
MANUEL LUJAN, Jr.,
ROBERT J. LAGOMARSINO,
RON MARLENEE,

From the Committee on the Judiciary, for consideration of the bankruptcy provisions contained in sections 9432 and 9433 of the House bill, and sections 4553(e), 4558, and 4559 of the Senate amendment, and modifications committed to conference:

HAMILTON FISH, Jr.,
BILL DANNEMEYER,
CARLOS J. MOORHEAD,
HENRY J. HYDE,

From the Committee on Merchant Marine and Fisheries, for consideration of Title VI of the House bill, and sections 1002, 2002 (insofar as that section would add a new section 409 (c) and (d) to the Nuclear Waste Policy Act of 1982), 2008, and 3001 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
MIKE LOWRY,
EARL HUTTO,
BOB DAVIS,
DON YOUNG,
(except for sections 2002 and 2008 of the Senate amendment)
NORMAN F. LENT,
(except for sections 2002, 2008, and 3001 of the Senate amendment)
NORMAN D. SHUMWAY,
BILL HUGHES,
(solely for section 3001 of the Senate amendment)

From the Committee on Post Office and Civil Service, for consideration of Title VII of the House bill, and Title V (except section 5002) of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
MICKEY LELAND,

GARY L. ACKERMAN,
GENE TAYLOR,
FRANK HORTON,

From the Committee on Public Works and Transportation only for consideration of subtitle A of Title VI of the House bill:

JAMES J. HOWARD,
ROBERT A. ROE,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY NOWAK,
NICK RAHALL,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND,
NEWT GINGRICH,

From the Committee on Government Operations, for consideration of sections 5002 and 9003 of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
JOHN CONYERS,
CARDISS COLLINS,
GLENN ENGLISH,
HENRY A. WAXMAN,
TED WEISS,
FRANK HORTON,
ROBERT A. WALKER,
WILLIAM F. CLINGER,
AL MCCANDLESS,

From the Committee on Science, Space, and Technology, for consideration of sections 2002 (insofar as that section would add new sections 403(i) and 410 to the Nuclear Waste Policy Act of 1982), 2006, and 2008 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
GEORGE E. BROWN, Jr.,
JAMES H. SCHEUER,
TIM VALENTINE,
JIM CHAPMAN,
SID MORRISON,
LAMAR SMITH,
ERNEST KONNYU,

From the Committee on Veterans' Affairs, for consideration of Title VIII of the House bill, and Title VII of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
MARCY KAPTUR,
GERALD B.H. SOLOMON,

From the Committee on Ways and Means, for consideration of Title III, subtitle A of Title IV, and Title IX of the House bill, and subtitle A of Title IV (except subpart V of Part A and Subpart II of Part B) and subtitle A of Title VI

and section 8309 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
THOMAS J. DOWNEY,
BILL GRADISON,
BILL FRENZEL,
(only for the pension provisions)
RICHARD T. SCHULZE,
(only for the pension provisions)

From the Committee on Ways and Means, for consideration of Title X of the House bill, and subtitle B of Title IV of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
THOMAS J. DOWNEY,

From the Committee on Ways and Means, for consideration of Title X of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
THOMAS J. DOWNEY,
JOHN J. DUNCAN,

As additional conferees, for consideration of the House bill (except Title X), and the Senate amendment (except subtitle B of Title IV), and modifications committed to conference:

THOMAS S. FOLEY,
DICK CHENEY,
Managers on the Part of the House.

From the Committee on the Budget:

LAWTON CHILES,
ERNEST F. HOLLINGS,
J. BENNETT JOHNSTON,
JIM SASSER,
DON RIEGLE,
J.J. EXON,
FRANK R. LAUTENBERG,
PETE V. DOMENICI,
RUDY BOSCHWITZ,
BOB DOLE,

From the Committee on Agriculture, Nutrition, and Forestry:

PAT LEAHY,
JOHN MELCHER,
DAVID PRYOR,
RICHARD G. LUGAR,
THAD COCHRAN,

From the Committee on Armed Services:

SAM NUNN,
JOHN GLENN,

From the Committee on Banking, Housing, and Urban Affairs:

WILLIAM PROXMIRE,
ALAN CRANSTON,
PAUL SARBANES,

From the Committee on Commerce, Science, and Transportation:

FRITZ HOLLINGS,
DANIEL K. INOUYE,
WENDELL H. FORD,
JACK DANFORTH,

From the Committee on Energy and Natural Resources:

J. BENNETT JOHNSTON,
DALE BUMPERS,
WENDELL FORD,
JOHN MELCHER,
JEFF BINGAMAN,
TIM WIRTH,
DON NICKLES,

From the Committee on Environment and Public Works;

QUENTIN N. BURDICK,
GEORGE MITCHELL,
MAX BAUCUS,
JOHN BREAUX,
ROBERT T. STAFFORD,
JOHN H. CHAFEE,
DAVE DURENBERGER,

From the Committee on Finance:

LLOYD BENTSEN,
SPARK M. MATSUNAGA,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
DAVID L. BOREN,
BILL BRADLEY,
GEORGE MITCHELL,
BOB PACKWOOD,
JOHN C. DANFORTH,
JOHN H. CHAFEE,
JOHN HEINZ,

From the Committee on Governmental Affairs:

JOHN GLENN,
LAWTON CHILES,
JIM SASSER,
DAVID PRYOR,
TED STEVENS,

(except I do not concur with the budget reduction allocations pursuant to the Summit agreement)
WARREN B. RUDMAN,
From the Committee on Labor and Human Resources:
TED KENNEDY,
CLAIBORNE PELL,
PAUL SIMON,
ORRIN HATCH,
ROBERT T. STAFFORD,
DAN QUAYLE,
From the Committee on Veterans' Affairs:
ALAN CRANSTON,
SPARK M. MATSUNAGA,
FRANK H. MURKOWSKI,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

AGRICULTURAL RECONCILIATION

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to Title I of the bill (H.R. 3545) to provide for agricultural reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The *Senate* amendment struck out all of the *House* bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—AGRICULTURE AND RELATED PROGRAMS

SUBTITLE A—ADJUSTMENTS TO AGRICULTURAL COMMODITY PROGRAMS

(1) Short title

The *Senate* amendment provides that the agricultural title may be cited as the "Agricultural Reconciliation Act of 1987".

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the Senate provision. (Sec. 1001)

(2) Agricultural Income Support Reductions

The *Senate* amendment provides for a reduction of 1 percent in the target price level for the 1988 crops of wheat, feed grains, upland cotton, and rice, and in the level of price support for wool. Expenditures under the milk price support program for 1988 will be reduced by an amount which is equivalent to a 1 percent support price reduction. The funds will be generated through a 2.5 cent assessment on all milk purchased for commerical use during the 1988 calendar year.

In the case of the 1988 crops, the target price of wheat is reduced from $4.29 per bushel to $4.25 per bushel, the target price of feed grains is reduced from $2.97 per bushel to $2.94 per bushel, the target price for rice is reduced from $11.30 per hundredweight to $11.19 per hundredweight, and the target price for cotton is re-

duced from $0.77 per pound to $0.762 per pound. The loan rate for honey for each of the 1987 through 1990 crops is reduced as follows: 2 cents per pound for the 1987 crop, ¾ cent per pound for the 1988 crop, ½ cent per pound for the 1989 crop, and ¼ cent per pound for the 1990 crop.

The support price for wool for 1988 is also reduced by 1 percent.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate amendment* with amendments. Under the Conference substitute, target prices are reduced as follows:

1988 crop of wheat, from $4.29 to $4.23 per bushel;
1989 crop of wheat, from $4.16 to $4.10 per bushel;
1988 crop of feed grains, from $2.97 to $2.93 per bushel;
1989 crop of feed grains, from $2.88 to $2.84 per bushel;
1988 crop of upland cotton, from 77 to 75.9 cents per pound;
1989 crop of upland cotton, from 74.5 to 73.4 cents per pound;
1988 crop of rice, from $11.30 to $11.15 per hundredweight; and
1989 crop of rice, from $10.95 to $10.80 per hundredweight.

In addition, the formula used to compute the target price for the 1988 and 1989 crops of extra long staple cotton is reduced by 1.4 percent. (Sec. 1102)

In the case of the 1988 and 1989 crops of tobacco, the Secretary is authorized to achieve a 1.4 percent savings by lowering price support levels or by levying assessments on producers and purchases. (Sec. 1104) The Conference substitute adopts three provisions to modify the tobacco program. The first provision will allow, under limited circumstances, for the lease and transfer of flue-cured tobacco quota assigned to a farm after June 30 of any crop year. The second provision will eliminate the adjustment that is required every five years for the national average yield goal for flue-cured tobacco. The third provision will express the sense of Congress that the Secretary review current compliance procedures for acreage-poundage quotas with respect to cigar and dark-air and fire-cured tobaccos. (Sec. 1112)

In the case of the 1988 and 1989 crops of peanuts and sugarcane and sugar beets, the Secretary is required to reduce outlays under such programs by 1.4 percent. Such reduction shall not affect the loan level for peanuts, sugarcane, or sugar beets nor the calculation of the market stabilization price for sugar. In the case of honey, the per pound loan level is reduced by 2 cents for 1987, ¾ cents for 1988, ½ cents for 1989, and ¼ cents for 1990. The price support level for wool and mohair is reduced by 1.4 percent for the 1988 and 1989 marketing years. A reduction in outlays under the milk price support program will be achieved through an assessment equal to 2.5 cents per hundredweight on all milk produced in the United States and marketed by producers for commercial use during 1988. (Sec. 1104)

(3) Loan Rates

The *Senate* amendment amends the 1949 Act to provide that the basic loan rates for the 1988 crops of wheat, feed grains, upland cotton and rice may decline by only 1 percent from 1987 levels.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with an amendment. The Agricultural Act of 1949 is amended to provide that the basic loan rate for the 1988 crops of wheat, feed grains, upland cotton, and rice may not be reduced by more than 3 percent from 1987 levels. In the case of the 1989 crops of these commodities, the provisions contained in current law apply, allowing the Secretary of Agriculutre to lower the basic loan rate by no more than 5 percent. In the case of the 1989 crops only, the Secretary may reduce the basic loan rate by an additional 2 percent, if the Secretary, after considering adjustments in the loan rate made under the "Findley" provision, determines that an additional reduction in the basic loan rate is necessary in order to maintain market competitiveness. (Sec. 1102)

(4) Paid Land Diversion Program for Feed Grains

The *Senate* amendment provides that if the Secretary implements a paid land diversion program for the 1988 or 1989 crop of feed grains, the maximum amount of the diversion shall be 5%. For the 1988 crop, the payment rate shall be $2.00 per bushel. For the 1989 crop, the payment rate shall be $1.75 per bushel. However, if the Secreary does not implement the additional 5 percent acreage limitation program for feed grains, but instead implements the 2.5 percent program, the paid land diversion program for the 1989 crop of feed grains would be 7.5 percent with a payment rate of $1.75 per bushel.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the Senate provision with an amendment. The Conference substitute provides that the Secretary shall implement a paid land diversion program for each of the 1988 and 1989 crops of corn, grain sorghums, and barley. The amount of the diversion shall be 10 percent. The payment rate shall be $1.75 per bushel for corn. The payment rate for grain sorghums and barley shall be established by the Secretary in relation to the payment rate for corn. In the case of the 1989 crops, the Secretary may, if necessary to maintain an adequate supply of one or all of these commodities, elect not to implement the paid land diversion program for any or all of these commodities. (Sec. 1103)

(5) Acreage Limitation Program for Feed Grains

The *Senate* amendment provides that if the Secretary implements an acreage limitation program for the 1988 or 1989 crops of feed grains, the Secretary shall requre an additional reduction of not more than 5 percent. If the Secretary increases the acreage limitation by this 5%, the Secretary must allow a producer to plant oilseeds (soybeans, sunflowers, other oilseeds specified by the Secretary) on such idled acreage. The producers' feed grain crop acreage base shall be protected. The Secretary may waive this 5% increase in the acreage limitation program for the 1989 crop of feed grains if the Secretary determines that it is necessary in order to maintain adequate stocks of feed grains or to ensure that stocks of soybeans are not excessive. Further, in the case of the 1989 crop of feed grains, if 1989 soybean stocks are estimated to exceed 425 million bushels, soybeans may not be planted on the additional idled acreage. However, in that case, the additional acreage limitation

requirement may only be 2.5 percent. The Senate amendment contains several conforming amendments designed to implement this section.

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(6) Loan Rate Differentials

The *Senate* amendment would amend section 403 of the 1949 Act to restrict the degree that state, region, or county loan rates for the 1988 through 1990 crops may be adjusted to reflect transportation and other differentials. The section limits such adjustments to the percentage change in the national average loan rate plus or minus 1 percent.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with an amendment. The Conference substitute provides that the state, region, or county loan rates for the 1988 through 1990 crops of wheat and feed grains may be adjusted to reflect transportation and other differentials by no more than the percentage change in the national average loan rate plus or minus 2 percent. (Sec. 1105)

(7) Storage Expenditures

The *Senate* amendment requires the Commodity Credit Corporation to reduce its total expenditures for commercial storage, handling, and transportation of CCC owned commodities over fiscal years 1988 and 1989 by a total of $230,000,000 from the amount of funds expended in fiscal year 1987 for commercial storage, transportation, and handling of such commodities. The Secretary shall adjust storage, handling, or transportation rates and take other appropriate action in order to achieve these savings.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the Senate provision with an amendment. The Conference substitute provides that the Secretary of Agriculture shall ensure that expenditures of the Commodity Credit Corporation for storage, transportation, and handling of CCC owned commodities (excluding payments made under the farmer owned reserve) are reduced by a total of $230,000,000 over the 1988 and 1989 fiscal years from the amount of funds otherwise projected to be expended under the August 1987 Gramm-Rudman-Hollings baseline over such fiscal years. In order to achieve these savings the Secretary shall adjust storage, handling, or transportation expenditures paid by the CCC or take other appropriate actions. (Sec. 1106)

(8) Acreage Reduction Program for Oats

The *House* bill provides that, in implementing a feed grain acreage limitation program for the 1988, 1989, or 1990 crops of feed grains, the Secretary shall be prohibited from requiring a producer of oats to limit the acreage planted to oats for harvest on the farm to less than 95 percent of the farm's feed grain crop acreage base allocated to barley and oats (as adjusted to deduct the acreage within the farm's barley and oats base planted to barley for harvest and the acreage within such base that is considered as reduced acreage with respect to such barley production). The Secretary

must announce revisions of the acreage limitation program for the 1988 crop of feed grains to implement this provision as soon as practicable after the date of enactment of the bill.

The *Senate* amendment provides that, in the case of the 1988 through 1990 crops of oats, the Secretary of Agriculture shall not establish an acreage limitation requirement in excess of 5 percent. This requirement may be waived in the case of the 1990 crop of oats if the Secretary determines that the supply of oats will be excessive. The Secretary is required to issue regulations that provide for the fair and equitable treatment of producers on a farm for which an oats and barley crop acreage base has been established.

The *Conference* substitute adopts the *Senate provision.* It is the intent of the managers that the Secretary should encourage additional plantings of oats. This change in the feed grain acreage limitation program should provide the barley/oats producer with some incentive to shift acres out of barley and into oats, which will lower barley stocks and oat imports.

Under this provision, if a producer chooses to plant the farm's entire oats and barley acreage base to oats, the Secretary of Agriculture may not limit the production of oats on such combined acreage base to less than 95 percent of the combined acreage base. However, if a producer chooses to plant a portion of such combined base acreage to barley in any crop year, the Secretary may make the necessary adjustment in permitted plantings to recognize this fact. (Sec. 1107)

(9) Producer Reserve Program

The *Senate* amendment provides that the minimum quantity of wheat and feed grains that must be stored in accordance with the producer reserve program (section 110 of the 1949 Act) is 300 million bushels for wheat and 450 million bushels for feed grains. Current law directs the Secretary to provide incentives to producers to place grain in long term storage programs if the amount of grain stored under these programs falls to less than 17 percent of total annual projected use for wheat and 7 percent of total annual projected use for feed grains.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1108)

(10) Yield Adjustments

The *Senate* amendment would amend secton 506(b)(2) of the 1949 Act to provide that in the case of each of the 1988 through 1990 crops of wheat, feed grains, upland cotton and rice, if the farm program payment yield for a farm is reduced more than 10 percent below the farm program payment yield for the 1985 crop year, the Secretary shall make available to producers established price payments for the commodity. These payments shall be made in such amounts as the Secretary determines is necessary to provide the same total return to producers as if the farm program payment yield had not been reduced more than 10 percent below the farm program payment yield for the 1985 crop year.

Such payments shall be made available to producers at the time that the final deficiency payments under the wheat, feed grains, upland cotton, and rice programs are made available to producers.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1109)

(11) Advance Deficiency Payments

The *House* bill provides that the Secretary of Agriculture shall, in the case of the 1988 through 1990 crops, make advance deficiency payments available to producers in an amount determined by multiplying—

(1) the estimated farm program acreage for the crop, by

(2) the farm program payment yield for the crop, by

(3) in the case of a crop of wheat or feed grains (except for the 1988 crops of corn and grain sorghum), 30 percent of the projected payment rate, in the case of the 1988 crop of corn or grain sorghum, 30⅓ percent of the projected rate, and in the case of a crop of upland cotton or rice, 20 percent of the projected payment rate.

The *Senate* amendment provides that, for the 1988 through 1990 crops of wheat, feed grains, upland cotton, and rice, if the Secretary of Agriculture determines that deficiency payments will likely be made for any of such commodities, the Secretary shall make deficiency payments available in advance to producers of these commodities. The Secretary shall make no less than 40 percent of the expected wheat and feed grains deficiency payments and no less than 30 percent of the expected cotton and rice deficiency payments in advance.

The *Conference* substitute adopts the *Senate* provision.

(12) Advanced Emergency Complensation Payments

The *House* bill requires the Secretary of Agriculture to make available to producers of the 1987 crop of wheat the "Findley" portion of the deficiency payment as follows:

(a) Not later than December 1, 1987, the Secretary must estimate the payment rate, per bushel, for the "Findley" payments for the crop.

(b) At the same time, the Secretary must make available to each producer of such crop, at the producer's option, a "Findley" payment in an amount, per bushel, equal to not less than 75 percent (as determined by the Secretary) of such estimated payment rate.

(c) The Secretary must make available to each producer of such crop the full amount of the "Findley" payment, less any amount paid to the producer as described in item (b) above, at such later time established by the Secretary.

In addition, the timing for making the "Findley" payment available in the case of the 1987 crops of oats and barley and the 1988 crops of corn and grain sorghum is similarly modified except that the date the Secretary has to estimate "Findley" payments for the 1988 crop of corn and grain sorghum is March 1, 1989.

The *Senate* amendment requires the Secretary of Agriculture to estimate by December 1 of each of the marketing years 1988 through 1990 the national average market price per bushel of wheat received by producers during each of such marketing years. The Secretary shall, by December 15 of each such marketing year, make 90 percent of the estimated final wheat deficiency payment

available to producers who have elected this payment option. In the case of the 1987 marketing year for wheat, the Secretary must make such estimate as soon as practicable after the date of enactment of the Agricultural Reconciliation Act of 1987 and must make such advanced payments available within 60 days after the date of enactment of the Act.

For the 1987 crop of wheat, producers may elect the payment option under this section no later than 30 days after the date of enactment of the Agricultural Reconciliation Act of 1987. For the 1988 through 1990 crops of wheat, producers must elect this payment option at the time of signup. Under traditional tax rules, producers would be attributed income in the year in which the payment is received.

The estimated payment provided for by this amendment would be based upon the Secretary's projection of the season average price for each year. The balance of such payments, if any, would be made at the end of the marketing year.

The *Conference* substitute adopts the *Senate* provision with an amendment. The Conference substitute requires the Secretary of Agriculture to make only 75 percent of the estimated final wheat deficiency payment available to producers who have elected this payment option. The Conference sustitute also modifies the timing for these payments for the 1987 crops. (Sec. 1111)

(13) Loan Programs for Soybeans and Other Oilseeds

The *Senate* amendment provides for a mandatory marketing loan program for each of the 1988 and 1989 crops of soybeans and sunflowers. Under this program, the Secretary of Agriculture shall allow producers of these commodities to repay a price support loan at the prevailing world market price for the commodity, as determined by the Secretary. The loan rate for soybeans is established as under current law. The provision establishes the support price for sunflowers at 8 cents per pound for the 1988 through 1990 crops. The Secretary of Agriculture is also directed to support the price of the 1988 and 1989 crops of cottonseed at a level and in such manner as the Secretary determines is fair and reasonable in relation to the level and manner in which the price of soybeans is supported.

The *House* bill contains no comparable provision.

The *Conference* substitute deletes this provision.

(14) Wheat Acreage Diversion.

The *Senate* amendment allows a limited disaster program (0/92) for producers of the 1988 crop of wheat who were prevented from planting 1988 crop wheat because of a drought in 1987.

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(15) Disposition of Excess Stocks

The *House* bill requires the Secretary of Agriculture, during the period October 1, 1987, through September 30, 1990, to dispose of agricultural commodities owned by the Commodity Credit Corporation for nontraditional uses that the Secretary determines will not displace commercial sales or depress prices for such commodities.

The Secretary must give priority to disposing of out of condition or inferior quality stocks, stocks for innovative nontraditional uses, and stocks for uses that offer environmental or similar benefits. Disposal is to be on a bid basis, but the Secretary may set minimum prices. Secretary, to the extent practicable, should dispose of 1 billion bushels. Secretary must report to the Agriculture Committees of the House and Senate not later than October 31, 1990, on the operation of this program.

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision.

Subtitle B—Optional Acreage Program

(16) Optional Diversion Program

The *House* bill amends the 50/92 program for the 1988 through 1990 crops of wheat and feed grains. The amendment provides that, notwithstanding any other provision imposing a 50-percent planting requirement, producers of the 1988, 1989, or 1990 crop who elect to devote all or a portion in excess of 50 percent of the permitted wheat or feed grain acreage of the farm to conservation or other authorized uses will receive deficiency payments on the acreage that is considered to be planted to wheat or feed grains and eligible for optional acreage diversion payments for such crop. Payments will be at a per-bushel rate established by the Secretary, except that the rate could not be established at less than the projected deficiency payment rate for the crop, as determined by the Secretary. The projected payment rate for the crop will be announced prior to the period during which wheat or feed grain producers may agree to participate in the program for such crop. Haying and grazing will not be permitted on any acreage in excess of 50 percent of the permitted wheat or feed grain acreage, as applicable, of the farm. The Secretary is required to issue regulations implementing this provision within 30 days after the date of enactment. The Secretary shall protect the crop acreage base and farm program payment yield of a producer who enrolls in this program. The Secretary shall implement this program so as not to adversely affect landlord-tenant relationships and so as to minimize any adverse effect on agribusiness and other agriculturally related economic interests within any county, State, or region.

The *Senate* amendment provides that, in the case of the 1988 and 1989 crops of wheat, feed grains, upland cotton, and rice, if the Secretary determines that supplies of the commodity are excessive, the Secretary shall implement a whole base bid program under which producers may agree to retire their entire base acreage for a crop in return for a base diversion payment. The amount of payments made under this program will be determined through the submission of bids for base diversion contracts by producers in such manner as the Secretary may prescribe or by such other means as the Secretary determines appropriate. In order to protect local agribusinesses and other local economic interests, the provision limits the amount of acreage in any county that may be bid into this program to an amount that is 2.5 percent above (5 percent for feed grains) the percentage reduction established under the acreage limitation program and the land diversion program for the crop. Pay-

ments under this program will be made at the same time and in the same manner as deficiency payments. The Secretary shall preserve the crop acreage base of the producer. Haying and grazing of the program commodity will be permitted except for a 5-month period (during the period April through October) designated by the State Agricultural Stabilization and Conservation Committee.

The *Conference* substitute adopts the *House* bill with amendments. The *Conference* substitute provides that producers of the 1988, 1989, or 1990 crops of wheat and feed grains who elect to devote all or a portion of the permitted wheat or feed grain acreage of the farm to conservation or other authorized uses will receive deficiency payments on the acreage that is considered to be planted to wheat or feed grains and eligible for optional acreage diversion payments for such crop. (Secs. 1201–03)

The provisions in the Agricultural Act of 1949 governing the haying and grazing of conservation use acreage are revised and made uniform. The *Conference* substitute provides that haying and grazing of acreage designated as conservation use acreage under any of the commodity and production adjustment programs (not including the Conservation Reserve Program) shall be permitted except during any consecutive 5-month period that is established by the State Agricultural Stabilization and Conservation Committee. Such 5-month period shall be established during the period beginning April 1, and ending October 31, of a year. In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage. Haying and grazing shall not be permitted for any crop if the Secretary determines that haying and grazing would have an adverse economic effect (Sec. 1113)

The managers are concerned that the optional diversion program could result in large amounts of land in a county being diverted from production and thereby severely impacting on the local economy. Therefore, the Conference substitute authorizes the Secretary of Agriculture to carry out this program in such a manner so as to minimize adverse effects on the economy within any county. The Secretary should ensure that no more than 50 percent of a county's total acreage base for a commodity is taken out of production in any year through the production adjustment programs and the conservation reserve program unless there is a disaster in that county.

Subtitle C—Farm Program Payments

(17) Prevention of the Creation of Entities to Qualify as Separate Persons

The *House* bill provides that a person that receives payments subject to limitation under section 1001 of the Food Security Act of 1985, or honey program loans, for a crop year will not be permitted also to hold, directly or indirectly, substantial beneficial interests in more than 2 corporations or similar entities engaged in farm operations that also receive such payments or loans as separate persons, for the purposes of the application of the payment limitation. A beneficial interest of less than 10 percent will not be considered to be substantial unless the Secretary of Agriculture determines, on a case by case basis, that such interest is substantial. Each entity receiving payments or loans as a separate person must

notify such individual or other entity that acquires or holds a substantial beneficial interest in it of the requirements and limitation under this bill. Persons must notify the Secretary of any interests in excess of the number of permitted entities and payments to such persons and entities will be reduced accordingly.

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with amendments. The Conference substitute requires the Secretary to notify individuals or entities affected by the new legislation and to permit them to adjust their interests in the entity or entities affected. The Conference substitute also makes the provisions pertaining to payment limitations effective beginning with the 1989 crop year. (Sec. 1301)

(18) Payments Limited to Active Farmers

The *House* bill provides that in order to be eligible to receive farm program payments, a "person" must be "actively engaged" in farming. In order to be actively engaged, (a) an individual must make a significant contribution of (1) capital, equipment or land, and (2) personal labor or active personal management; (b) the individual's share of the proceeds from the operation must be commensurate with the individual's contribution to the operation; and (c) the individual's contributions are at risk. Similar requirements are provided for corporations and similar entities. If a general partnership, joint venture, or similar entity separately makes a significant contribution of capital, equipment, or land and the commensurate share and at risk standards are met by the entity, the partners or members making a significant contribution of personal labor or active personal management will be considered to be actively engaged in farming with respect to the farming operation involved. The bill contains certain limited exemptions from the above requirements with respect to landowners, sharecroppers who contribute labor to the farming operation, and adult family members.

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with amendment. The Conference substitute provides that the spouse of a family member will be eligible for farm payments under the same terms and conditions as a family member in lieu of a family member who does not make a significant contribution. (Sec. 1302)

(19) Definition of Person; Eligible Individuals and Entities; Restrictions Applicable to Cash-Rent Tenants

The *House* bill defines the term "person" for the purpose of applying the payment limitation to include individuals, corporations, joint stock companies, associations, limited partnerships, charitable organizations, or other similar entity (as determined by the Secretary), provides that the Secretary of Agriculture is to give fair and equitable treatment to trusts and estates and the beneficiaries thereof, and provides that spouses may be separate persons with respect to farming operations they were separately engaged in prior to their marriage and with respect to which they continue to be operated separately. The House bill also provides that any person that conducts a farming operation to produce a crop subject to a payment limitation as a tenant that rents the land for cash must

be considered the same person as the landlord unless the tenant makes a significant contribution of personal labor or active personal management, and equipment, used in the farming operation. Changes in farming operations that increase the number of separate persons must be substantive and bona fide.

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with an amendment. A tenant that rents the land for cash and provides personal labor must contribute capital, land or equipment. As provided in the House bill, a tenant who rents the land for cash and who contributes active personal management must contribute equipment in order to be separately eligible to receive payments. The Conferees intend that States, political subdivisions and agencies are eligible to be treated as landowners. (Sec. 1303)

(20) More Effective and Uniform Application of Payment Limitations

The *House* bill requires the Secretary of Agriculture to conduct a payment provisions education program for appropriate personnel of the Department of Agriculture. The House bill also provides that if the Secretary determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the payment limitation, such person will become ineligible to receive farm program payments subject to the payment limitations, or honey program loans, applicable to the crop year for which the scheme or device was adopted and the succeeding crop year.

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision. (Sec. 1304)

(21) Regulations; Transition Rules; Equitable Adjustments

The *House* bill contains several provisions relating to the implementing of the payment limitation provisions contained in the bill. For example, the House bill provides that the Secretary is authorized to waive the changes in the law for the 1988 crop year or for any class of individuals in the interest of "fairness" and may waive the "substantive change" rule to allow farm operations that face a payment reduction to reorganize. The term "person" is also redefined with respect to the Conservation Reserve Program in order to conform with the bill.

The *Senate* contains no comparable provisions.

The *Conference* substitute adopts the *House* provision with amendments. The Conference substitute extends the deadline for the issuance of USDA regulations. The substitute also requires the Secretary to establish time limits for the notice, hearing, decision and appeals procedures in order to ensure expeditious handling and settlement of payment limitation disputes. The Conference substitute makes the amendments pertaining to payment limitations effective beginning with the 1989 crop year. (Sec. 1305)

(22) Foreign Persons Made Ineligible for Program Benefits

The *House* bill provides that for each of the 1988 through 1990 crops, any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence will be ineligible to receive any type of production adjust-

ment payments, price support program loans, payments, or other farm program payments unless such person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such farm.

The *Senate* amendment contains no comparable provisions.

The *Conference* substitute adopts the *House* provision with an amendment that makes restrictions pertaining to foreign persons effective for the 1989 crop. (Sec. 1306)

(23) Government Agencies Made Ineligible for Certain Program Benefits

The *House* bill provides that states and state agencies are ineligible for farm program payments.

The *Senate* amendment contains no comparable provisions.

The *Conference* substitute deletes the *House* provision and permits such entities to be eligible for farm payments in conformance with the $50,000 payment limit, except that payment limits shall not be applicable to lands owned by public school districts or land that is owned by a State that is used to maintain a public school.

(24) Honey Payment Limitations

The *Senate* amendment removes limitations on (a) the amount of honey which can be placed under loan at any one time and (b) the amount of gain received by a honey producer under the marketing loan program are removed. The section provides that the maximum amount of honey which can be forfeited by a honey producer to the government may not exceed $250,000 for any crop.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with an amendment. The amendment removes the limitation on the amount of honey loans a producer may have outstanding at any one time.

Provisions in current law that limit the amount of gain that may be received by a honey producer under the marketing loan program are retained. (Sec. 1307)

SUBTITLE D—PREPAYMENT OF RURAL ELECTRIFICATION LOANS

(25) Prepayment of Loans

The *House* bill amends Section 306A of the Rural Electrification Act of 1936 to allow Rural Electrification Administration ("REA") borrowers to prepay loan advances to the Federal Financing Bank ("FFB") if private capital is used to replace the loan and the borrower certifies that any savings from prepayment will be passed on to its customers, used to improve the financial strength of the borrower, or used to avoid future rate increases.

A processing fee will be assessed at the time of prepayment on each loan advance and shall be in an amount equal to 1.78 percent of the outstanding principal balance of the loan advance. Charges in addition to principal and processing fee are expressly prohibited. The borrower may, at its option, amend the existing guarantee to include the amount of the principal balance prepaid, the amount of the processing fee, and the cost to the borrower of obtaining financing to prepay the loan or advance.

Where a borrower had, prior to the effective date of this Act, reached an agreement with REA regarding prepayment, the borrower may, at its option, prepay such loan under such agreement after such effective date. The Secretary of Agriculture is directed to issue regulations to facilitate prepayment and processing of applications.

The related provisions of the *Senate* amendment allow REA borrowers to prepay these loan advances in a similar fashion. A borrower must certify that borrower will not apply for a loan made by the REA or FFB to refinance the private loan or replace private capital used to prepay a loan advance.

The *Senate* amendment calculates the processing fee for each prepayment by adding 50 basis points plus points equal to 50 percent of the difference between the interest rate of the loan advance being prepaid and the cost of money to the federal government at the time of prepayment.

Borrowers which were determined by REA to be eligible to prepay, or which prepaid, a loan advance, may prepay under any combination of terms and conditions applicable to such prepayments under section 306A of the Rural Electrification Act of 1936 as in effect prior to this amendment or as amended.

The *Conference* substitute adopts the *House* provision with an amendment to provide that the Administrator shall allow prepayment of Federal Financing Bank loans by Rural Electrification borrowers during fiscal year 1988 without penalty. Such prepayment shall be allowed in an amount not less than $2 billion. The eight borrowers who were determined by the Administrator to be eligible to prepay in fiscal year 1987, or who prepaid, will receive first priority to prepay. Other borrowers will prepay on a first come-first served basis, based on the order in which borrowers are prepared to disburse funds to the Federal Financing Bank. Prepayments in excess of a total amount of prepayments during fiscal year 1988 of $2 billion shall be subject solely to the approval of the Secretary of the Treasury.

The conferees intend that if either the House Committee on Agriculture or the Senate Committee on Agriculture, Nutrition and Forestry conducts a review of issues related to the prepayment of Federal Financing Bank loans guaranteed by the Rural Electrification Administration, such review will also include consideration of the discretion that may or should be granted to the Secretary of Treasury to place a priority on applications for prepayment under any future prepayment authority. (Sec. 1401)

(26) Use of Funds

The *House* bill allows the borrower of an insured or guaranteed electric loan to invest its own funds or make loans or guarantees not in excess of 15 percent of its total utility plant, without restriction or prior approval by the Administrator.

The *Senate* amendment is substantially the same as the *House* bill.

The *Conference* substitute adopts the *House* provision. (Sec. 1402)

(27) Cushion of Credit Payments Program

The *Senate* amendment allows REA electric and telephone borrowers to make voluntary advance payments to cushion of credit accounts within the Rural Electrification and Telephone Revolving Fund ("Fund"). A borrower may reduce the balance of its cushion of credit account only to make scheduled payments on loans made or guaranteed under the Act. Amounts in these accounts will earn 5% for the REA borrower from REA; meanwhile, all cash balances held by the Fund will bear interest to the Fund at the average rate on certificates of beneficial ownership issued by the Fund. Income from this interest differential will flow into a special Rural Economic Development Subaccount within the fund. The Administrator is authorized to make grants or zero interest loans to borrowers to promote rural economic development and job creation projects. Such loans and grants shall be made during each fiscal year to the full extent of the amount held by the subaccount.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1403)

(28) REA Procedure in Property Acquisition

The *House* bill requires that borrowers which have received REA loan guarantees or Rural Telephone Bank loans must receive the Administrator's approval before selling or disposing of property, rights or franchises. The *House* bill establishes the conditions under which the REA Administrator cannot give his approval to the acquisition of such property by annexation or condemnation. These conditions are that the borrower or its REA financed wholesale supplier opposes the acquisition and, in addition, the acquisition (a) increases costs to consumers, (b) impairs the ability of the borrower or its wholesale supplier to provide adequate, reliable service at reasonable costs, (c) jeopardizes the government's loan security, or (d) otherwise interferes with the purposes of the Rural Electrification Act. Certification by the board of directors of an affected borrower or a wholesale supplier would constitute prima facie evidence of increased cost or impaired service.

The *Senate* amendment contains no comparable provisions.

The *Conference* substitute deletes the *House* provision. The conferees intend that the REA Administrator be more assertive in exercising existing authority in the Rural Electrification Act in reviewing the disposition, acquisition and annexation of cooperatives' properties. Where the Administrator determines that such disposition, acquisition or annexation will threaten the purpose of the Rural Electrification Act, the conferees expect the Administrator to exercise this authority.

(29) Amortization and Refinancing of Certificates of Beneficial Ownership

The *House* bill requires that all Certificates of Beneficial Ownership ("CBOs") held by the Rural Electrification and Telephone Revolving Fund be refinanced at a rate equal to the Government's cost of money for new Treasury borrowings of the same maturity. All existing and new CBOs will be amortized on a normal basis, with principal and interest paid each year.

The *Senate* amendment contains no comparable provisions.

The *Conference* substitute deletes the *House* provision

(30) Electric Transmission Study by REA Administrator

The *House* bill directs the REA Administrator to undertake a study to evaluate the feasibility of creating a nation-wide utility-owned transmission network. The Administrator is directed to consult with all segments of the electric utility industry and to submit a final report by September 30, 1990.

The *Senate* amendment contains no comparable provisions.

The *Conference* substitute deletes the *House* provision.

(31) Rural Telephone Bank—Loan Prepayment

The *House* bill allows a Rural Telephone Bank ("telephone bank") borrower to prepay a loan or any part thereof without paying prepayment penalties set forth in the note covering such loan, if such prepayment is made prior to October 1, 1988. The Governor of the telephone bank is directed to issue regulations to implement prepayment; such regulations may not further restrict prepayment.

The *Senate* amendment contains a comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1411)

(32) Rural Telephone Bank—General Interest Rate Formula.

The *House* bill provides that in the first fiscal year of the advance, under new loan commitments, the interest rate equals the average yield on long-term U.S. bonds with comparable maturities on the day of advance. In all subsequent fiscal years, the advance carries an interest rate reflecting the telephone bank's computed cost of money rate in the fiscal year the advance was made.

The *Senate* amendment provides no specific formula but requires that future advances on new loans must be issued at the telephone bank's "cost of money" rate.

The *Conference* substitute deletes both provisions in favor of amendments made to item 33.

(33) Rural Telephone Bank—Other Provisions

The *House* bill directs that interest rates on advances made before October 1, 1987, be recomputed according to the following table in order to develop the weighted average cost:

Fiscal year:	*Percent*
1974	5.01
1975	5.85
1976	5.33
1977	5.00
1978	5.87
1979	5.93
1980	8.10
1981	9.46
1982	8.39
1983	6.99
1984	6.55
1985	5.00
1986	5.00
1987	5.00

Borrowers automatically receive this weighted average cost effective January 1, 1988 or retain the loan commitment rate, whichever is lower.

If an advance is made in FY 1988 from committed but previously unadvanced funds, the rate stipulated in the loan commitment is applied. The interest rate on advances made in FY 1989 and beyond is determined by using the General formula above.

The telephone bank's Governor is required to transfer amounts in the reserve for contingencies into a new reserve for losses due to interest rate fluctuations.

GAO is directed to study the telephone bank's operations and report findings in 6 months. This study should include the disposition of excess reserves.

The telephone bank may have only two reserves—one for loan losses and one for interest rate fluctuations.

The telephone bank may not deny a loan or loan advance based on any policy which has not been published in accordance with the notice and comment procedures in the Administrative Procedure Act.

The *Senate* amendment does not contain a comparable provision.

The *Conference* substitute adopts the *House* provision with an amendment to provide a formula to calculate the telephone bank's cost of money for each fiscal year on all future loans. This formula requires the telephone bank to consider several factors, including the bank's annual return on its class A, B and C stock and its historic cost of money rate. Borrowers who received loan commitments on or after October 1, 1987, and prior to the date of enactment of this Act have an option to retain permanently their loan commitment rate. The Conference substitute also gives borrowers the right of appellate review of interest rate determinations, requires the telephone bank to publish its rate determinations in the Federal Register, prohibits the sale of telephone bank assets, and provides that the Treasury rate shall be assumed to be the telephone bank rate for the purposes of assessing eligibility. The Conference substitute establishes a new reserve for losses due to interest rate fluctuations and prohibits new reserves.

The *Conference* substitute requires the telephone bank to publish rules, regulations, bulletins and other written policy standards relating to public property loans, grants, benefits or contracts, notwithstanding the exemption from notice and comment rulemaking contained in 5 U.S.C. 553. After September 30, 1988, the telephone bank shall not take adverse action against a borrower or applicant for any reason which is based on a rule, regulation, bulletin or policy standard which has not been published.

The managers intend that nothing in this bill will reduce or interfere with any remedies—legal, equitable or otherwise—that borrowers or others may have for past overcharges or other wrongs by the telephone bank. (Secs. 1412–14)

SUBTITLE E—MISCELLANEOUS

(34) Marketing Order Penalties

The *House* bill amends section of the Agricultural Adjustment Act to—

(a) authorize the Secretary of Agriculture to assess a civil penalty of not more than $1,000 for each violation of any provision of a marketing order (other than a provision calling for

payment of a pro rata share of expenses) by any handler or the handler's officer, director, agent, or employee subject to the market order. Each day during which the violation continues is deemed a separate violation;

(b) prohibit the Secretary from assessing a civil penalty for the violation between the date on which the handler filed a petition with the Secretary pursuant to section 8c(15) of the Agricultural Adjustment Act and the date on which notice of the Secretary's ruling on the handler's 8c(15) petition was given to the handler in accordance with regulations, if the Secretary finds that the handler's 8c(15) petition was filed and prosecuted by the handler in good faith and not for delay; and

(c) authorize the Secretary to issue an order assessing a civil penalty only after notice and an opportunity for an agency hearing on the record. The order assessing the civil penalty will be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant or has a principal place of business. The validity of the order assessing the civil penalty is not reviewable in an action to collect the civil penalty.

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision. (Sec. 1501)

(35) Study of Use of Agricultural Commodity Futures and Options Markets

The *Senate* amendment extends the time in which the study on the use of commodity futures and options markets, authorized in the Food Security Act of 1985, is to be completed from December 31, 1988, to December 31, 1989.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1502)

(36) Authorization of Appropriations for Philippine Food Aid Initiative

The *Senate* amendment authorizes, under section 416 of the Agricultural Act of 1949, $1 million to be appropriated for technical assistance for the sale or barter of commodities to strengthen nonprofit private organizations and cooperatives in the Philippines.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1503)

(37) Rural Industrialization Assistance

The *Senate* amendment amends section 310B(c) of the Consolidated Farm and Rural Development Act to allow private nonprofit corporations to participate with public bodies in grant programs to finance and facilitate development of small and emerging private rural business enterprises.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1504)

(38) Plant Variety Protection Fees

The *Senate* amendment amends section 31 of the Plant Variety Protection Act to provide that the Secretary of Agriculture shall charge and collect reasonable fees for the services performed under

the Plant Variety Protection Act. The Secretary is authorized to charge a late payment penalty for overdue fee payments. All fees, payment penalties, and collected interest shall be credited to the account that incurs the cost and shall remain available without fiscal year limitation to pay the expenses incurred by the Secretary in carrying out the Plant Variety Protection Act. These collected funds may be invested by the Secretary in certain specified accounts.

The Attorney General may bring an acton for the recovery of charges that have not been paid in accordance with the Plant Variety Protection Act against any person obligated for payment of such charges under such Act.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1505)

(39) Annual Appropriations to Reimburse the Commodity Credit Corporation for Net Realized Losses

The *Senate* amendment provides for the funding of the operations of the Commodity Credit Corporation by means of a current, indefinite appropriation. The amendment also provides that no funds may be appropriated for operating expenses of the Commodity Credit Corporation (all expenditures of the Corporation made in carrying out its activities, including those under the annual commodity programs authorized under the 1949 Act and the Agricultural Adjustment Act of 1938) except as authorized under section 2 of Public Law 87-155 to reimburse the Corporation for net realized losses.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1506)

(40) Federal Crop Insurance

The *Senate* amendment provides that it is the sense of Congress that the Federal Crop Insurance Corporation should not be required to assume 100 percent of all loss adjustments in the Federal Crop Insurance program. The section further states that the Corporation should assume and perform the loss adjustment obligations of a reinsured company if such company's loss adjustment performance is not carried out in accordance with the applicable reinsurance agreement.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1507)

(41) Ethanol Usage

The *Senate* amendment contains certain findings of Congress concerning the use of ethanol as a source of motor fuel including findings that ethanol can be blended with gasoline to produce a relatively clean source of fuel; ethanol can be produced from grain, a renewable resource that is in considerable surplus in the United States; and an increase in the quantity of motor fuels that contain at least 10 percent ethanol from current levels to 50 percent by 1992 would create thousands of new jobs in ethanol production facilities. The amendment further provides that it is the sense of Congress that the Administrator of the Environmental Protection

Agency should use the authority provided under the Clean Air Act to require greater use of ethanol as a motor fuel.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. (Sec. 1508)

(42) Demonstration of Family Independence Program

The *Senate* amendment authorizes the State of Washington to conduct a food stamp demonstration project aimed at increasing the employability and self-sufficiency of recipients.

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. The Conferees expect that the project will be carried out at no additional cost to the Federal government.

(43) Frozen Food Labelling

The *House* bill amends section 1 of the Federal Meat Inspection Act to provide that a product shall be considered to be misbranded under that Act if—

(a) it is a product that contains meat or a meat food product and includes an ingredient that resembles any variety of cheese for which a standard of identity exists in an amount which is greater than ⅓ the amount of standardized cheese used in the product; and

(b) there does not appear on the label of such product in a prominent manner contiguous to the product name on the principal display panel the term "contains imitation cheese" or, when authorized by the Secretary, the term "contains cheese alternate".

The Secretary shall approve other common or usual names to describe the ingredient that resembles any variety of cheese for which a standard of identity exists. In determining the appropriate name, the Secretary should give due consideration to all relevant federal regulations and policies such as 21 C.F.R. 101.3(e).

The House bill is to be implemented by September 1, 1988. The Secretary is required to grant individual requests for temporary exemptions from compliance with requirements under the amendments on a showing of need. Any temporary exemption granted by the Secretary could not extend beyond September 1, 1989.

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision.

(44) Sale of Rural Development Notes

The *Senate* amendment provides for the sale of assets of the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act.

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

House Bill

The *House* bill had no such provision.

Senate amendment

The *Senate* amendment establishes a National Economic Commission to conduct a comprehensive study and review of the ele-

ments of Federal policy that have resulted in the national debt and budget deficit. The commission consists of twelve members appointed by the President and majority and minority of the House and Senate, augmented after the November election by two members to be appointed by the President-elect. The amendment requires the Commission to issue a report in March 1989 that contains recommendations on achieving deficit reduction and economic growth, also ensuring that the burden of achieving deficit reduction goals is equitably distributed.

Conference agreement

The *Conference* agreement modifies the *Senate* amendment to establish a National Economic Commission to issue a final report on March 1, 1989 recommending methods to reduce the Federal budget deficit while promoting economic growth and encouraging saving and capital formation, also ensuring that the burden of achieving budget deficit reduction goals is equitably distributed. The Commission consists of twelve members appointed by the President and majority and minority leaders of the House and Senate, augmented after the November election by two members, one Democrat and one Republican, to be appointed by the President-Elect. The initial 12 members shall be appointed no later than March 1, 1988. The President, on February 1, 1989, may extend the date for submission of the final report to September 1, 1989. Any expenses of the Commission, which shall not exceed $1,000,000, shall be paid from such funds as may be available to the Secretary of the Treasury. It is the intent of the conferees that the provision of the Federal Advisory Committee Act concerning "balance" be scrupulously adhered to in the composition of the Commission.

GUARANTEED STUDENT LOAN PROGRAM

REPORT LANGUAGE ON APPEALS PROCESS

In adopting this provision, it is the goal of the Managers that the Secretary recover the excess cash reserves based on the guidelines established by the General Accounting Office (GAO). However, the bill also provides a process whereby a guaranty agency may appeal a determination by the Secretary for a waiver of such a requirement. The agency's appeal may be based on a deterioration of financial position or significant changes in economic circumstances or its loan program which render the reserves, as limited by the bill, inadequate for continued functioning of the agency. The Managers expect that the Secretary will broadly exercise the authority to waive the requirement in order to prevent damage to the functioning of the guaranty agency.

For example, the Managers do not intend that the Secretary shall only grant relief if the agency would be forced to cease operations; such a narrow interpretation would not be in keeping with the intent of the Managers. The Secretary must assess whether reduction of cash reserves would materially affect the agencies; current and future ability to perform their vital role as the guarantors of student loans. The Secretary should consider such factors as existing contractural obligations, composition of current and probable future student populations served by the guarantor, changes in

sources of funds which diminish the guaranty agency's ability to have sufficient resources to meet lender's claims including, but not limited to, the subrogation of loans to the Department of Eduction under 428(c)(8), delayed payment of reimbursement under 428(c)(1) or payments under 428(f), and the reduction in reserves caused by the return of federal advance funds required by previous statutes. The Managers expect that in assessing appeals by guaranty agencies the Secretary will take into account their most recent available certified financial statements. The Managers wish to stress it is not the intention of the Congress to either materially harm an agency's ability to fulfill its function in the guaranteed student loan program or to so financially weaken an agency so as to impair its function.

I. PROVISIONS RELATING TO MEDICARE

A. Medicare Provisions (Part A)

1. Hospital Prospective Payment Rates (Section 9201 of House bill; Sections 4001 (a), (e), (f), and (h), 4002(a), and 4004(d) of the Senate amendment).

Present law

(a) Basic Update Factor for PPS Hospitals.—The Social Security Amendments of 1983 (P.L. 98-21) authorized the Secretary to determine the rate of increase in the payment rates, known as the update factor, for hospitals included in the prospective payment system (PPS) for FY 1986 and thereafter, taking into account the recommendations of the Prospective Payment Assessment Commission (ProPAC).

The Emergency Extension Act of 1985 (P.L. 99-107, as amended) froze FY 1986 rates at FY 1985 levels until April 30, 1986, The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA, P.L. 99-272) established the update factor for the final five months of FY 1986. It also authorized the Secretary to determine the update factors for FY 1987 and FY 1988, subject to an upper limit equal to the projected increase in the hospital market basket (the Secretary's estimate of the annual increase in the cost of goods and services used by hospitals in providing care).

The Omnibus Budget Reconciliation Act of 1986 (OBRA, P.L. 99-509) delayed until FY 1989 the Secretary's authority to establish the update factor and set the update factor for FY 1987 at 1.15 percent. The update factor for FY 1988 was set at 2 percentage points below the market basket increase.

The debt limit extension act, P.L. 100-119, provides that, for the period October 1 through November 20, 1987, payment rates for PPS hospitals are frozen at FY 1987 levels. On November 20, 1987, the extension period expired. For discharges occurring on or after November 21, 1987, the federal portion of the payment rate is based entirely on the national rate (rather than a blend of national and regional rates) and the national rate is increased by 2.7 percent. For the first 51 days of a cost reporting period beginning on or after October 1, 1987, the blend factors for the federal and hospital specific portions of the rate are frozen at 75 and 25 percent, re-

spectively, and the update factor for the hospital specific rate is zero percent. For discharges occurring on or after the 52nd day of such periods, the federal and hospital specific blend factors change to 100 and 0 percent, respectively (the hospital's payment is based entirely on the national rate). Under P.L. 100–119, all payments to hospitals made on or after November 21, 1987, are reduced by 2.324 percent.

(b) Adjustment for Hospitals in Large Urban Areas or in Rural Areas.—(1) Separate standardized amounts, the basic Federal payment rates for PPS hospitals, are calculated for urban and rural hospitals. The same annual update factor is used for both the urban and the rural rates.

(2) For each diagnosis-related group (DRG), the Secretary computes national and regional urban and rural DRG-specific prospective payment rates by multiplying the applicable standardized amount by a weighting factor for the DRG.

(3) For short-stay hospitals in Puerto Rico, the basic payment rate for discharges after October 1, 1987, is equal to 75 percent of a separately calculated Puerto Rico DRG-specific rate plus 25 percent of the discharge-weighted average of the national urban and national rural DRG-specific rates.

(c) Adjustment for Non-Labor Costs.—The Secretary divides each DRG prospective payment rate into a portion attributable to wages and wage-related costs and a portion attributable to non-wage operating costs. The portion attributable to wages is adjusted by an Area Wage Index. This index, computed for each urban area and for all rural areas combined in each State, measures the level of hospital wages in the area relative to the national average hospital wage level. The portion of the rate attributable to non-wage operating costs is not adjusted by area (except for hospitals in Alaska and Hawaii). The final DRG rate for an area is the sum of the adjusted wage portion and the unadjusted non-wage portion.

(d) Disproportionate Share Adjustment and Indirect Medical Education Payments.—(1) The portion of PPS payments to hospitals based on Federal rates is adjusted to provide additional payment for the indirect costs of medical education. For FY 1988 and 1989, this adjustment is equal to:

$$2.0 \times ((1 + r)^{.405} - 1)$$

where "r" equals the ratio of the hospital's full-time equivalent interns and residents to beds. Under this formula, a hospital with approved medical education programs receives an increase of approximately 8.1 percent in the Federal portion of its PPS payments for each 0.1 in the ratio of interns and residents to beds. For FY 1990 and later years, the adjustment is:

$$.5 \times ((1 + r)^{.5795} - 1)$$

or approximately 8.7 percent for each 0.1 in the ratio of interns and residents to beds.

(2) For discharges between May 1, 1986 and October 1, 1989, the portion of PPS payments to hospitals based on Federal rates is adjusted to provide additional payments to those hospitals serving a disproportionate share of low-income patients.

For hospitals in urban areas with 100 or more beds which receive at least 30 percent of their net inpatient revenues from State and local payments for indigent care, the adjustment is 15 percent. For other hospitals, a disproportionate patient percentage is computed, reflecting relative volumes of inpatient care to Medicare patients eligible for Supplemental Security Income payments and to patients eligible for Medicaid. Hospitals whose percentage exceeds specified thresholds receive an adjustment according to a formula based on the percentage. For urban hospitals with 100 or more beds, the adjustment cannot exceed 15 percent. (Different rules apply for smaller urban and for rural hospitals.)

(3) The authority for the disproportionate share adjustment expires October 1, 1989.

(e) Update for PPS-Exempt Hospitals.—Certain hospitals are exempt from PPS and continue to be reimbursed on a reasonable cost basis. Reimbursement is limited to a target amount which is increased annually. The percentage increase in the target amount for hospital cost reporting periods beginning in a fiscal year conforms to the update factor for PPS rates in the same fiscal year. For cost reporting periods beginning during FY 1988, OBRA provided for an increase of 2 percentage points below the market basket increase. For FY 1989 and subsequent years, the percentage increase was to be established by the Secretary, OBRA also authorized the Secretary to establish different update factors for PPS and PPS-exempt hospitals and to vary the factors among types of exempt hospitals or units. P.L. 100–119 provides that, for a hospital cost reporting period beginning in FY 1988, the target amount for the first 51 days of the period is limited to the amount in effect during the previous reporting period.

(f) Wage Index Survey.—The Secretary is required to re-estimate "from time to time" the wage indices used in computing PPS payments. No particular methodology for developing the indices is specified.

(g) ProPAC Report on Study of Separate DRG Rates for Urban and Rural Hospitals.—The Secretary is required, through FY 1989, to submit an annual report on the impact of PPS. The report for 1985 was required to include the results of a study of the feasibility and impact of eliminating or phasing out the separate urban and rural DRG payment rates.

(h) Clinic Hospital Wage Indices.—Certain hospitals which, prior to FY 1983, furnished some services ordinarily included in the DRG payment through related organizations and permitted those organizations to bill separately for those services under part B, have been permitted to continue this practice at the discretion of the Secretary.

House bill

(a) Basic Update Factor for PPS Hospitals.—Sets the FY 1988 update factor for PPS hospitals at 1.0 percent. For FY 1989, sets the update factor equal to the market basket percentage increase minus 4.2 percentage points. For FY 1990, sets the factor equal to the market basket percentage increase minus 1.7 percentage points. Provides that update factors for FY 1991 and subsequent years are to be determined by the Secretary.

(b) Adjustment for Hospitals in Large Urban Areas or in Rural Areas.—(1) Requires the Secretary to establish separate standardized amounts for large urban areas, other urban areas, and rural areas. Large urban areas are defined as urban areas with a population of more than 1,000,000, as determined by the Secretary on the basis of the most recent available Bureau of the Census population data.

Provides that for discharges occurring in fiscal years 1988, 1989, and 1990, the annual increase in the standardized amounts for hospitals in large urban areas and rural areas is equal to the update factor for that fiscal year plus one percentage point. For hospitals in other urban areas, the annual increase is equal to the update factor for the fiscal year.

Specifies that the separate FY 1988 annual increase percentages for hospitals in large urban and other urban areas are both applied to the single urban standardized amount for FY 1987. For FY 1989 and 1990 the percentages are applied to the separate FY 1988 and FY 1989 standardized amounts, respectively.

Specifies that, for FY 1991 and later years, the annual increase in the standardized amounts for hospitals in large urban, other urban, and rural areas is equal to the update factor determined by the Secretary.

(2) Provides that, for each DRG, the Secretary is to compute for each fiscal year national and regional large urban, other urban, and rural DRG-specific prospective payment rates by multiplying the large urban, other urban, or rural standardized amounts by a weighting factor for the DRG.

(3) Provides that the 25 percent national component of the Puerto Rico DRG-specific rates shall be the discharge-weighted average of the large urban, other urban, and rural DRG-specific rates.

(c) Adjustment for Non-Labor Costs.—Provides that the Secretary shall compute a non-wage price index for each area and shall adjust the non-wage portion of each DRG rate by this index.

Provides that, for FY 1988, 1989, and 1990, the non-wage index for each State is the ratio of the average (weighted by discharges) of the area wage indexes for that State to the national discharge-weighted average wage index. For FY 1991 and after, the Secretary is required to use an area-specific non-wage index reflecting the price level in each area for non-personnel goods and services relative to the national average price level.

Provides that, for any hospital, the increase or decrease in the payment rate per discharge resulting from this adjustment is limited to 1 percent of what would have been paid for the same discharge (excluding any extra payments under provisions for "outliers," cases with unusually high costs or long stays) without the adjustment. The Secretary is required to adjust the standardized amounts in order to ensure that the use of a non-wage index does not result in the aggregate, in higher or lower payments than would otherwise have been made.

Requires the Secretary to report to Congress on the development of the non-wage price factors no later than October 1, 1989.

(d) Disproportionate Share Adjustment and Indirect Medical Education Payments.—(1) Changes the formula for the FY 1988 and 1989 indirect medical education adjustment to:

$$2.0 \times ((1 + r)^{.3975} - 1)$$

The change reduces the adjustment to approximately 7.95 percent for each 0.1 in the ratio of interns and residents to beds.

(2) Increases the disproportionate share adjustment to 20 percent for large urban hospitals meeting the State and local indigent care revenue test. For other urban hospitals with over 100 beds qualifying for an adjustment, provides that the adjustment is no longer limited to a maximum of 15 percent.

(3) No provision.

(c) Update for PPS-Exempt Hospitals—Provides for annual increases in target amounts separate from the rate increases provided for PPS hospitals. Sets the increase for cost reporting periods beginning in FY 1988, excluding the first 51 days of such periods, at 2.0 percentage points below the market basket percentage increase. For FY 1989 and subsequent years, sets the increase equal to the projected increase in the market basket. The Secretary's authority to set the increase for PPS-exempt hospitals and to vary the rate of increase among types of exempt hospitals and units is eliminated.

(f) Wage Index Survey.—No provision.

(g) ProPAC Report on Study of Separate DRG Rates for Urban and Rural Hospitals.—No provision.

(h) Clinic Hospital Wage Indices.—No provision.

Effective dates.—The increase in the target amounts for PPS-exempt hospitals applies 51 days after the start of a cost reporting period beginning on or after October 1, 1987. All other changes are effective for discharges occurring on or after November 20, 1987.

Senate amendment

(a) Basic Update Factor for PPC Hospitals and Adjustment for Hospitals in Rural Areas.—Sets the FY 1988 update factor at 0.5 percent for hospitals paid at the urban rate and 3.7 percent for hospitals paid at the rural rate, for discharges occurring on or after January 1, 1988. Amends section 107 of P.L. 100–119 to clarify that the blend factors for the Federal and hospital specific portions of the rate are frozen at 75 percent and 25 percent, respectively, and that the update factor applicable for the hospital specific rate is zero percent during the first 51 days of the hospital's furst cost reporting period beginning on or after October 1, 1987. For FY 1989, sets the update factor (for both urban and rural hospitals) at the market basket percentage increase minus two percentage points; for FY 1990, sets the factor at the market basket increase minus 1.6 percentage points. For FY 1991 and subsequent years, the update factors are to be determined by the Secretary. The Secretary is authorized to set different update factors for urban and rural PPS hospitals.

(b) Adjustment for Hospitals in Large Urban Areas or in Rural Areas.—See item (a), above.

(c) Adjustment for Non-Labor Costs.—No provision.

(d) Disproportionate Share Adjustment and Indirect Medical Education Payments.—(1) Changes the formula for the FY 1988 and 1989 indirect medical education adjustment to:

$$1.56 \times ((1 + r)^{.405} - 1)$$

effective for discharges on or after January 1, 1988, and provides that this formula shall remain in effect through FY 1990. The change reduces the adjustment to appropriately 6.3 percent for each 0.1 in the ratio of interns and residents to beds.

For FY 1991 and later years, changes the formula to:

$$1.7 \times ((1 + r)^{.405} - 1)$$

The change reduces the adjustment to approximately 6.9 percent for each 0.1 in the ratio of interns and residents to beds. Conforming amendments clarify that the formula changes are to be taken into account in determining payments.

(2) No provision.

(3) Extends the disproportionate share adjustment to October 1, 1990.

(e) Update for PPS-Exempt Hospitals.—Provides for annual increases in target amounts separate from the rate increases provided for PPS hospitals. Sets the increase for cost reporting periods beginning in FY 1988, excluding the first 51 days of such periods, at 2.7 percent. For FY 1989 and FY 1990, sets the increase equal to the projected increase in the market basket. For FY 1991 and subsequent years, the Secretary is authorized to establish the increase. The Secretary retains the authority to vary the rates of increase among types of exempt hospitals and units.

(f) Wage Index Survey.—Requires the Secretary to re-compute the wage indices not later than October 1, 1989, and at least every 36 months thereafter. The indices are to be based on a survey, updated as appropriate of wages and wage-related costs for PPS hospital. To the extent the Secretary deems feasible, the survey is to measure earnings and paid hours of employment by occupational category and exclude data on wages and wage-related costs incurred in furnishing skilled nursing facility services. See also item 2(e).

(g) ProPAC report on Study of Separate DRG Rates for Urban and Rural Hospitals.—Requires that ProPAC evaluate the study conducted by the Secretary and report its conclusions and recommendations to Congress no later than March 1, 1988.

(h) Clinic Hospital Wage Indices.—Revises the method of calculating the wage index for the purpose of adjusting payments after December, 1986, to a hospital which has been allowed to continue permitting billing by related organizations. The Secretary would be required to include wage costs for employees of the related organizations who are directly involved in the delivery or administration of the care furnished by the related organization to the hospital's inpatients. Wage costs do not include costs of overhead or home office administrative salaries or costs incurred outside the hospital's Standard Metropolitan Statistical Area.

Effective dates.—(a-b) Applies to discharges on or after January 1, 1988. (d) The provision relating to the indirect medical education adjustment applies to discharges on or after January 1, 1988. The

provision on disproportionate share adjustments is effective on enactment. (e) Applies to cost reporting periods beginning in FY 1988, excluding the first 51 days of such periods. (f), (g), and (h) Enactment.

Conference agreement:

(a)-(b) Basic Update Factor for PPS Hospitals; Adjustment for Hospitals in Large Urban Areas or in Rural Areas.—The conference agreement includes the House provisions, with amendments. The update factor for FY 1988 is set at 1.5 percent for hospitals in large urban areas, at 1.0 percent for hospitals in other urban areas, and at 3.0 percent for hospitals in rural areas. For FY 1989, the update is the market basket percentage increase less 2.0 percentage points for large urban areas, less 2.5 percentage points for other urban areas, and less 1.5 percentage points for rural areas. For FY 1990 and subsequent years, the update factor for all areas is set equal to the market basket percentage increase.

The agreement establishes regional floors for the standardized amounts, effective for discharges occurring on or after April 1, 1988, and before September 30, 1990. The regional floor for a region is set equal to the higher of the national standardized amount, or the sum of 85 percent of the national standardized amount and 15 percent of the regional standardized amount.

(c) Adjustment for Non-Labor Costs.—The conference agreement substitutes the following for the House provision. The Prospective Payment Assessment Commission is required to conduct a study of hospital nonlabor costs and input prices; the study is to be completed by October 1, 1989. The agreement does not include provisions relating to the use of a non-wage index in the computation of DRG payment rates or requiring a report by the Secretary on non-wage price factors.

(d) Disproportionate Share Adjustment and Indirect Medical Education Payments.—The conference agreement includes the House provision, with amendments. The provision is effective for discharges occurring on or after October 1, 1988. The indirect medical education adjustment is reduced to approximately 7.7 percent for each 0.1 in the ratio of interns and residents to beds. The disproportionate share adjustment is increased to 25 percent for hospitals meeting the State and local indigent care revenue test.

The conferees are concerned that the Secretary has not proceeded expeditiously to implement the disproportionate share adjustment for hospitals which receive more than thirty percent of net patient revenues from State and local governmental sources. The conferees wish to reaffirm their expectation that the Secretary will proceed to implement this adjustment without delay.

The conference agreement also provides the Secretary with the authority to make disproportionate share payments, under certain circumstances, on behalf of an inpatient facility of a multi-facility provider where the individual facility qualifies for disproportionate share payments but the provider as a whole does not qualify for such payments. In order to qualify, the provider's inpatient facilities must be physically separate, the facility in question must provide the Secretary with information documenting its Medicare dis-

charges and the provider's Medicare allowable inpatient costs must exceed its Medicare payments for inpatient care.

The conferees intend that the Secretary will make a determination of the facility's disproportionate share payment percentage, separate from the provider as a whole, when the provider submits the necessary data, and that the Secretary will make disproportionate share payments on behalf of inpatient facilities which meet the disproportionate share criteria and the other criteria specified in this provision.

(e) Update for PPS-Exempt Hospitals.—The conference agreement includes the Senate amendment.

(f) Wage Index Survey.—The conference agreement includes the Senate amendment. The conferees intend that the Secretary implement any update of the wage index in a budget neutral manner.

(g) ProPAC Report on Study of Separate DRG Rates for Urban and Rural Hospitals.—The conference agreement includes the Senate amendment with a modification to provide that ProPAC also study the desirability of maintaining separate rates for large urban and other urban hospitals.

(h) Clinic Hospital Wage Indices.—The conference agreement includes the Senate amendment, with a modification to provide that the changes in wage index methodology will take effect October 1, 1988.

2. Rural Hospitals (Section 9202 of House bill; Sections 4081 (b), (g), (o), (p), 4082 and 4083 of Senate amendment.

Present law

(a) Revision of Standards for Including a Rural County in an Urban Area.—Hospitals located in a county which is outside the boundaries of a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget (OMB) are deemed to be in a rural area. (One standard used by OMB in establishing whether a county is within an urban area is the proportion of the county's workers commuting to the central county of the area.) The Secretary has used a general exception authority to reclassify some rural counties as urban by regulation.

(b) Expansion of Swing-Bed Program.—Under certain conditions, rural hospitals with fewer than 50 beds may enter into an agreement with the Secretary under which beds are used both for inpatient care and, with reduced compensation, for extended care equivalent to that furnished by skilled nursing facilities (SNFs).

(c) Clarification of Sole Community Provider Status.—Hospitals meeting certain criteria may apply for "sole community hospital" status. The Secretary is required to provide a payment adjustment to cover the fixed costs of a sole community hospital with a decrease during a year of 5 percent or more in total inpatient case load due to circumstances beyond its control. This provision applies to cost reporting periods beginning befor October 1, 1988. PPS payments to sole community hospitals are based on a blend of 25 percent of a hospital-specific rate and 75 percent of the Federal regional rate.

(d) Medicare Classification of Rural Referral Centers.—Rural hospitals which have 500 or more beds, or which meet certain criteria regarding referral patterns and distance travelled by Medicare pa-

tients that receive inpatient care, are classified as rural referral centers. Other rural hospitals qualify for designation as rural referral centers if they: (1) have a case mix index at least equal to the lesser of the median case mix index value for all PPS hospitals located in urban areas (the national median) or the median index for all nonteaching hospitals located in urban areas in the same region (the regional median); (2) have total annual inpatient discharges equal to or greater than the lower of 5,000 or the median number of discharges for all urban hospitals located in the same region; and (3) meet at least one of three additional criteria regarding the specialty status of the medical staff, travel distances of Medicare patients or volume of referrals. Rural osteopathic hospitals must meet the same criteria except that the minimum number of annual discharges must be at least 3,000. By regulation, rural referral centers are reimbursed according to the Federal urban payment amount adjusted by the applicable rural wage index. OBRA provided that certain hospitals classified as rural referral centers on October 21, 1986, would retain this status through cost reporting periods beginning before October 1, 1989.

(e) Improving the Definition of Hospital Labor Market Areas.—Hospitals located in a county which is outside the boundaries of a Metropolitan Statistical Area as defined by the Office of Management and Budget (OBM) are deemed to be in a rural area. The Secretary has used a general exception authority to reclassify some rural counties as urban by regulation.

(f) Demonstration Projects to Maintain Access to Isolated and Financially Distressed Rural Sole Community Hospitals.—No provision.

(g) Grant Program for Rural Health Care Transition.—No provision.

(h) Office of Rural Health Policy.—No provision.

(i) Set Aside for Experiments and Demonstration Projects Relating to Rural Health Care Issues.—Various provisions of the Social Security Act, including section 1875, section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972, authorize the Secretary to conduct experiments and demonstrations regarding the operation or administration of the Medicare and Medicaid programs, or related issues such as coverage or reimbursement policy.

House bill

(a) Revision of Standards for Including a Rural County in an Urban Area.—(1) Provides that a hospital in a rural county adjacent to one or more urban areas shall be treated as being in the urban area to which the greatest number of workers in the county commute, if the county meets the following conditions: (a) it would be considered an urban county except for failure to meet current standards relating to commuting; (b) at least 15 percent of the employed persons in the county commute to the central county of any adjacent urban area, or the total number of persons commuting in either direction between the rural county and any adjacent urban area (the sum of the number of county resident commuting to any central county plus the number of persons commuting into the rural county from any uraban area) is at least equal to 20 percent

of the employed persons in the rural county; and (c) the average hospital wage level in the county is at least equal to the average wage level for rural hospitals in the State and at least equal to 85 percent of the average hospital wage level in the urban area to which the greatest number of the county's workers commute.

(2) Requires the Secretary to recompute the basic PPS payment rates for discharges occurring during FY 1988 to ensure that the reclassification of counties is budget neutral.

(3) Provides that Watertown Memorial Hospital in Watertown, Wisconsin is deemed to be located in Jefferson County, Wisconsin for PPS purposes.

(b) Expansion of Swing-Bed Program.—Provides that rural hospitals with fewer than 100 beds may participate in the swing-bed program. Payment for extended care services furnished by hospitals with 50–99 beds is subject to additional conditions. First, if there is an available SNF bed in the geographic area, the extended care patient must be transferred within 5 week-days, unless the patient's physician certifies that transfer is not medically appropriate; the Secretary is to provide by regulation for notice by SNFs to hospitals of the availability of beds. Second, payment is prohibited for days of Medicare-covered extended care at the hospital during a cost reporting period which exceed 15 percent of the product of the number of days in the period and the average number of licensed beds at the hospital.

Requires the Secretary to report, no later than February 1, 1989, on the proportion of swing-bed admissions approved or denied by peer review organizations (PROs) and on ways of encouraging participation in the swing-bed program by hospitals with low occupancy rates in areas with a nursing home bed shortage.

(c) Clarification of Sole Community Provider Status.—Provides that hospitals meeting the criteria for sole community hospital status may receive a payment adjustment without assuming the status of a sole community hospital. Extends the volume adjustment provision through cost reporting periods beginning before October 1, 1990. Requires the Secretary to issue clarifying instructions relating to implementation of the volume adjustment no later than October 1, 1987. Requires ProPAC to report to Congress by March 1, 1988, on the appropriateness of the criteria used in designating hospitals as sole community hospitals.

(d) Medicare Classification of Rural Referral Centers.—Classifies rural hospitals which have 275 or more beds as rural referral centers. Requires the Secretary to adjust the PPS payment rates for rural hospitals for discharges occurring on or after November 20, 1987 and before October 1, 1988 to ensure that this provision is budget neutral. Requires the Secretary to study and report to the Congress no later than March 1, 1989, on the extent of rural referral centers Medicare inpatient profits and losses and the appropriateness of paying the centers at a rate other than the rate paid to urban hospitals outside large urban areas. Also requires the Secretary to recommend criteria to be used in designating rural referral centers for cost reporting periods beginning on or after October 1, 1989.

(e) Improving the Definition of Hospital Labor Market Areas.—Provides that a hospital in a rural county immediately adjacent to

an urban area may apply to have its payment rates determined using the wage index adjustment for that urban area if it can show that its labor-related costs, adjusted for occupational mix, are at least equal to the 25th percentile of such costs in the urban area, or the median of such costs in the case of an urban area with fewer than four hospitals. Applies for discharges occurring on or after November 20, 1987 and before October 1, 1990. Requires the Secretary to adjust the payment rates under PPS in the following year to insure that the provision is budget-neutral.

Requires the Secretary to report to Congress, no later than September 30, 1989, on an analysis of variation in wage levels within and among the areas used as the basis for the area wage level adjustment, including the effects of variation in occupational mix and fringe benefits.

For discharges occurring on after October 1, 1989, requires the Secretary to replace the current system of urban and Statewide rural labor market areas with new area definitions based on the findings of the required analysis and taking into account similarities in labor costs for similar skill mixes. (See also item 1(f) above.)

(f) Demonstration Projects to Maintain Access to Isolated and Financially Distresed Rural Sole Community Hospitals.—Requires the Secretary to conduct, in geographically diverse areas, 3-year demonstration projects to determine appropriate methods of strengthening the financial and managerial ability of isolated and financially distressed rural hospitals to provide high quality care. Methods could include cooperative arrangements with other providers, diversification, physician recruitment, and improved management systems. Hospitals eligible to participate would be Medicare-participating rural hospitals which are certified as sole community hospitals, which have an average occupancy rate of less than 50 percent, and the closure of which would result in a significant loss of beneficiary access to necessary services. The Secretary is authorized to waive Medicare requirements as necessary and to spend up to $5 million from the Hospital Insurance trust fund in each of fiscal years 1988, 1989, and 1990 to conduct the projects.

Requires the Secretary to evaluate the demonstration projects and to report to the House Ways and Means and Senate Finance Committees. A preliminary report on the providers selected is due 18 months after enactment. A final report, with recommendations for legislation, is due upon completion of the demonstrations.

(g) Grant Program for Rural Health Care Transition.—No provision.

(h) Office of Rural Health Policy.—No provision.

(i) Set Aside for Experiments and Demonstration Projects Relating to Rural Health Care Issues.—No provision.

Effective date.—(a) Applies for discharges occurring on or after November 20, 1987. (b) Applies to swing-bed agreements entered into after September 30, 1987. The volume adjustment provision of (c) is effective for reporting periods beginning on or after the date of enactment. (d) Applies for discharges occurring on or after November 20, 1987.

Senate amendment

(a) Revision of Standards for Including a Rural County in an Urban Area.—(1) Similar provision, except that certain residents of adjacent urban areas who commute to the rural county are not counted in the total number of persons commuting in either direction between the rural county and any adjacent urban area. Also the wage-related criteria in the House bill are not included. The total number of persons commuting is determined as the sum of the number of county residents who commute for employment to the central county or counties of any adjacent urban area, plus the number of persons who commute into the rural county from the central county of counties of any adjacent urban area. Thus, in determining if the total number of persons commuting in either direction is at least equal to 20 percent of the employed population of the rural county, persons who commute into the rural county from any adjacent urban area but not from the central county or counties of the area are excluded.

(2) Similar provision, except that the Secretary is required to adjust the payment rates for urban hospitals only to ensure that any reclassification of counties is budget neutral. Also, for purposes of calculating the area hospital wage index, counties which qualify as urban counties under this provision are treated as rural counties.

(3) Identical provision.

(b) Expansion of Swing-bed Program.—No provision.

(c) Clarification of Sole Community Provider Status.—Similar provision, except that the Secretary is required to issue instructions to fiscal intermediaries clarifying criteria and application procedures for hospitals seeking a volume adjustment, within 120 days after the date of enactment. Also does not require ProPac to report to Congress regarding the criteria used to designate sole community hospitals. Additional payments to hospitals that qualify for volume adjustments under this provision, but are not sole community hospitals, are capped at $10 million in FY 1988 and $12 million in FY 1989.

(d) Medicare Classification of Rural Referral Centers.—Classifies rurla hospitals which have 275 or more beds as rural referral centers. Also creates a new class of rural referral centers, any hospital which: (1) has a case mix index equal to or greater than both the median case mix index for all urban nonteaching hospitals in the nation and the median case mix index for all urban nonteaching hospitals located in the same region; (2) has 3,000 or more discharges annually; and (3) meet other criteria specified by the Secretary. Requires the Secretary to implement these amendments in a budget neutral manner. These amendments are effective for discharges occurring on or after January 1, 1988, in the case of any hospital whose application for referral center status is approved, if the application was submitted before April 1, 1988.

(e) Improving the Definition of Hospital Labor Market Areas.—No provision.

(f) Demonstration Projects to Maintain Access to Isolated and Financially Distressed Rural Sole Community Hospitals.—No provision.

(g) Grant Program for Rural Health Care Transition.—Requires the Secretary to establish a program of grants to small rural hospitals to modify the type or extent of the service they provide in order to respond to various changes in their circumstances (such as changes in clinical practice patterns or service populations or changes in the demand for impatient or ambulatory care, etc.).

Non-Federal government-owned and private not-for-profit hospitals which are located in rural areas, have less than 100 beds and provide patient services for a variety of medical conditions, are eligible to submit a grant application to the Governor of their state. Within 30 days of receipt, the Governor, or his agent, must forward the application to the Secretary with any comments deemed appropriate.

Requires the Secretary to make awards based on: the Governor's comments; impact on expenditures under Part A of Medicare and access to care for Medicare beneficiaries; the applicant's understanding of its local market and current unmet needs of the elderly or disabled; and coordination with other providers and community leaders.

Limits grant awards to a maximum of $50,000 per year over a two-year period. Permits grant funds to be used for any expenses of the project applied for, except that not more than one third of any grant may be spent for capital-related costs, and no grant funds may be used to retire debt from capital expenditures which precede the grant project. Exempts capital expenditures undertaken to implement an approved project from the provisions of section 1122.

Requires the grantee to furnish such information as the Secretary may require to evaluate the project. Requires the Secretary to report to the Congress at least every six months regarding the status and performance of the program, including comments and recommendations of private and public entities with an interest in rural health care. Also requires the Secretary to submit a final report within 180 days after all projects are completed.

Authorizes appropriations from the Federal Hospital Insurance Trust Fund of $15 million per year in FY 1989 and FY 1990.

(h) Office of Rural Health Policy.—Require the Secretary of Health and Human Services to establish in HHS an Office of Rural Health Policy to advise the Secretary regarding the effects of current and proposed policies under Medicare and Medicaid on the financial viability of small rural hospitals to attract and retain physicians and other health profesionals, and on access to, and quality of health care in rural areas. Requires the Director of this office to oversee compliance with section 1102(b) relating to rulemaking and publication of rules) and with requirements elsewhere in this bill (see item 9(j)), regarding publication of an impact analysis of any proposed or final regulation which is expected to have a significant impact on small rural hospitals. Also requires the Director to: (1) establish and maintain a clearinghouse for collection and dissemination of information regarding issues, research findings and innovations in the delivery of care in rural areas; (2) coordinate Department activities related to rural health care, and (3) provide information to the Secretary and others regarding the related activities of other federal agencies.

(i) Set Aside for Experiments and Demonstration Projects Relating to Rural Health Care Issues.—Requires the Secretary, beginning with fiscal year 1989, to allocate not less than ten percent of the total spending on experiments and demonstrations authorized by section 402 of the Social Security Amendments of 1967 or by the Social Security Amendments of 1972, to experiments and demonstration projects relating substantially to rural health care issues. Such projects may address issues such as the impact of the PPS on the financial viability of small rural hospitals, the effect of Medicare payment policies on the ability of rural areas and rural hospitals to attract and retain physicians and other professionals, the appropriateness of Medicare conditions of participation for small rural hospitals and the impact of Medicare policies on access to and quality of, health care in rural areas.

Requires the Secretary to develop and report annually to the Congress (as part of the Secretary's annual report on the operation of the Medicare program) an agenda of experiments and demonstration projects relating to rural health care issues that are in progress or proposed, and the amounts obilgated and actually spent on such projects in the current and most recent fiscal years.

Effective date.—The amendment made by the first part of (a) applies for discharges occurring on or after January 1, 1988; the other provisions of (a) are effective on enactment. The volume adjustment provision of (c) is effective for reporting periods beginning on or after October 1, 1987. (d) Applies for discharges occurring on or after January 1, 1988. The provisions of (g), (h), and (i) are effective on enactment.

Confernece agreement

Part A, Item 2

(a) Revision of Standards for Including a Rural County in an Urban Area.—The conference agreement includes the Senate amendment with modifications. The community criteria in the House provision are included. A hospital located in a rural county which meets the commuting criteria in this provision is treated as being in the appropriate adjacent urban area for discharges occurring on or after October 1, 1988. The Secretary is required to adjust the payment rates, for urban hospitals only, to assure that any reclassification of hospitals from rural to urban is budget neutral.

The conferees intend that the effect of this provision shall be limited to the treatment, for payment purposes, of the hospitals located in qualifying rural counties; the boundaries and population size of the adjacent urban area shall not be altered.

(b) Expansion of Swing-Bed Program.—The conference agreement includes the House provision.

(c) Clarification of Sole Community Provider Status.—The conference agreement includes the Senate amendment with modifications. Additional payments to hospitals that qualify for a volume adjustment under this provision, but are not designated sole community hospitals, are capped at $5 million in FY 1988 and $10 million in FY 1989. The explicit requirement that the Secretary issue instructions to the fiscal intermediaries clarifying the criteria and

application procedures for hospitals seeking a volume adjustment, is not included.

(d) Medicare Classification of Rural Referral Centers.—The conference agreement includes the House provision, effective for discharges occurring on or after April 1, 1988.

(e) Improving the Definition of Hospital Labor Market Areas.—The conference agreement does not include the House provision.

(f) Demonstration Projects to Maintain Access to Isolated and Financially Distressed Rural Sole Community Hospitals.—The conference agreement does not include the House provision.

(g) Grant Program for Rural Health Care Transition.—The conference agreement includes the Senate amendment with modifications. The statement of the purpose of the program is amended. Grants are intended to support projects designed to demonstrate appropriate methods of strengthening the financial and managerial ability of isolated and financially distressed rural hospitals to provide high quality care. Such methods could include cooperative arrangements with other providers, diversification, physician recruitment, and improved management systems. Eligibility for grants is restricted to private not-for-profit hospitals which meet the other criteria included in the Senate amendment. The exemption, from the provisions of section 1122, of capital expenditures undertaken to implement an approved project, is not included.

(h) Office of Rural Health Policy.—The conference agreement includes the Senate amendment.

(i) Set Aside for Experiments and Demonstration Projects Relating to Rural Health Care Issues.—The conference agreement includes the Senate amendment with modifications. The Secretary is required to set aside specified portions of total spending for experiments and demonstrations during the three-year period beginning with FY 1988. The Secretary is required to allocate at least an additional ten percent of the total spending on expriments and demonstrations to projects relating substantially to health care issues of inner-city areas. The list of issues such projects may address is modified to reference both inner-city hospitals and inner-city areas as well as rural hospitals and rural areas. The requirement that the Secretary report to the Congress annually regarding the agenda of projects and spending related to rural health issues is extended to include projects and spending related to health issues in inner-city areas.

3. Payments for Capital-Related Costs (Section 9203 of House bill; Section 4003 of Senate amendment).

Present law

(a) Reductions in Payments for Capital.—Inpatient hospital capital-related costs, such as depreciation and interest, are excluded from PPS payments and are reimbursed on a reasonable cost basis. OBRA required the Secretary to reduce capital payments from amounts otherwise allowable by 3.5 percent in FY 1987, 7 percent in FY 1988, and 10 percent in FY 1989. P.L. 100-119 maintained the payment reduction at the 3.5 percent level through November 20, 1987.

(b) Prospective Payment for Capital-Related Costs.—(1) The Social Security Amendments of 1983 (P.L. 98-21) required the Secretary,

beginning in FY 1987, to include inpatient capital-related costs in PPS payments. The Urgent Supplemental Appropriations Act of 1986 (P.L. 99-349) postponed the inclusion of capital until FY 1988. OBRA gave the Secretary the discretion to postpone inclusion until a subsequent fiscal year of his choosing, and prohibited him from issuing a final rule relating to capital prior to September 1, 1987. On September 1, the Secretary published a final rule providing for phased implementation of prospective payment of capital-related costs. P.L. 100-119 extended the prohibition against rulemaking through November 20, 1987.

(2) P.L. 98-21 also provided that, unless Congress enacted legislation relating to capital payment prior to October 1, 1986, the Secretary could make no payment to a hospital for capital costs related to expenditures obligated by the hospital after September 30, 1986, unless the expenditures had been approved by a State planning agency with which the Secretary had entered into an agreement for the review of proposed capital expenditures pursuant to section 1122(b) of the Act. P.L. 99-349 postponed the date on which the State review requirement would go into effect to October 1, 1987. The Secretary has contended that the inclusion in OBRA of amendments related to capital costs constituted the legislation needed to nullify the requirement for 1122(b) State review agreements.

(c) ProPAC Report on Adjustment for Hospital Occupancy.—No provision.

House bill

(a) Reductions in Payments for Capital.—Provides that the payment reduction percentage for portions of cost reporting periods beginning after November 20, 1987, is 8.5 percent. Extends the 10 percent FY 1989 reduction through FY 1990.

(b) Prospective Payment for Capital-Related Costs.—(1) Requires the Secretary to establish a prospective payment system for capital-related costs of PPS hospitals for cost reporting periods beginning in FY 1992, and removes his authority in FY 1992, and removes his authority to establish a system at any earlier date.

Requires the system to provide for payment on a per discharge basis with apporpriate weighting for the type of discharge. Permits adjustments for hospital occupancy rate and for variations in construction or capital costs by area or type of facility. Permits the Secretary to grant exceptions to reflect capital obligations or for other reasons.

The term "capital-related costs" has the meaning given to it by the Secretary as of September 30, 1987.

(2) Deletes the requirement for 1122(b) agreements with State agencies. Conforming amendments delete other requirements which would have applied only to a prospective payment system for capital costs implemented prior to FY 1991.

(c) ProPAC Report on Adjustment for Hospital Occupancy.—Requires ProPAC to study and report to the House Ways and Means and Senate Finance Committees, no later than May 1, 1988, on the suitability and feasibility of linking Medicare capital payment to hospital occupancy rates.

Effective Date.—(a) Applies to portions of cost reporting periods occurring after November 20, 1987. The requirement in section (b)

for establishment of a prospective payment system for capital is effective October 1, 1987. The conforming amendments removing provisions applicable to such a system prior to FY 1991 are effective for cost reporting periods beginning on or after October 1, 1987, as is the removal of the Secretary's discretion to establish prospective payment for capital prior to FY 1992. All other provisions are effective on enactment.

Senate amendment

(a) Reduction in Payments for Capital.—Sets the payment reduction percentage for FY 1988 at 12 percent and establishes a 12 percent reduction for FY 1989 and a 10 percent reduction for FY 1990. For FY 1988, the reduction applies for portions of cost reporting periods or discharges occurring during FY 1988 after January 1, 1988. The reductions for FY 1989 and 1990 apply to portions of cost reporting periods or discharges occurring during those years.

(b) Prospective Payment for Capital-Related Costs.—(1) Postpones until FY 1992 the Secretary's authority to include capital-related costs in PPS payments.

The Secretary is prohibited from changing the definition of capital-related costs or the methodology for computing payment for capital-related costs for any inpatient hospital services. Any regulation violating this rule and published between August 1, 1987, and enactment is void, and such a regulation would not be recognized for the purposes of Gramm-Rudman. The rule does not apply to any regulation implementing the payment reduction percentages for capital-related costs.

(2) No provision.

(c) ProPAC Report on Adjustment for Hospital Occupancy.—No provision.

Effective Date.—The change in payment reduction percentages is effective for portions of cost reporting periods or discharges occurring after January 1, 1988.

Conference agreement

(a) Reduction in Payments for Capital.—The conference agreement includes the Senate amendment, with modifications. The payment reduction is increased to 12 percent for FY 1988, effective for discharges or portions of cost reporting periods occurring on or after January 1, 1988. For discharges or portions of cost reporting periods occurring in FY 1989, the reduction is 15 percent. The payment reduction for FY 1990 is eliminated.

(b) Prospective Payment for Capital-Related Costs.—The conference agreement includes the House provision.

Under the agreement, capital-related costs will be added to the Prospective Payment System as of October 1, 1991.

At that point, hospitals will have had more than eight years since the Congress originally indicated its intent in 1983 to reimburse for capital-related costs on a prospective basis.

(c) ProPAC Report on Adjustment for Hospital Occupancy.—The conference agreement includes the House provision.

4. Extension of Reductions under Sequester Order (Section 4014 of Senate Amendment).

Present law

On November 20, 1987, the President issued a final sequester order pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100-119). Under the terms of the sequester order, Medicare benefit payments for services rendered on or after November 21 and before the end of the fiscal year are reduced by 2.324 percent, to yield an aggregate reduction in benefit payments of 2 percent over the entire fiscal year.

House bill

No provision.

Senate amendment

Provides that the reductions in Medicare payment amounts required by the final sequester order shall continue to be effective for all services through December 31, 1987.

Effective date.—Enactment.

Conference agreement

The conference agreement includes the Senate amendment, with a modification to provide that the reductions in Medicare payment amounts required by the sequester order shall continue to be effective for hospital inpatient services through March 31, 1988.

5. Reporting Hospital Information (Section 9204 of House bill; and Section 4001(d) of Senate amendment)

Present law

(a) In General.—The Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (P.L. 95-142) required the Secretary to establish within one year of enactment uniform reporting requirements for inpatient hospitals and other providers. The Social Security Amendments of 1983 required the Secretary to maintain, at least until September 30, 1988, a system for the reporting of cost information by PPS hospitals.

(b) Conformity of Hospital Cost Reporting Periods.—Under current practice, the cost reporting periods used for hospitals conform to the fiscal years used in hospitals' internal accounting systems.

(c) Hospital Cost Data Base.—No provision.

House bill

(a) In General.—Specifies that the existing reporting system is applicable only for cost reporting periods beginning prior to October 1, 1988, and establishes new specific reporting requirements for fiscal intermediaries and hospitals. Specifies minimum service, cost, revenue, and other information to be included in reports. Defines the term "class" of payer and allows the Secretary to define the terms "bad debt" and "charity care."

(1) Quarterly reporting by fiscal intermediaries.—Requires each fiscal intermediary to compile and submit a quarterly summary and hospital-specific report within 45 days after the end of each quarter. Reports are to be based on information received from hospitals during the previous 4 calendar quarters. Reports are to be

provided to the House of Ways and Means and Senate Finance Committee, the Administrator of the Health Care Financing Administration, the Congressional Budget Office, and the Congressional Research Service.

(2) Annual reporting by each hospital.—Requires each hospital to submit its annual report to the fiscal intermediary within 90 days after the end of the hospital's cost reporting period. Reports are to include a financial statement and other information necessary to complete the report to be filed by the fiscal intermediary. In the event of late filing, payments to the hospital for the second succeeding quarter are to be reduced by 5 percent. Allows multiple hospitals under the joint ownership or control of a health maintenance organization or similar entity to file consolidated reports.

Requires the Secretary to develop a system for annual reporting which is compatible with the needs of PPS and which facilitates the electronic transmission of the information in the reports. See item 5(c), below.

Requires the Secretary to publish a notice of proposed rulemaking relating to annual reports no later than June 30, 1988, and a final rule no later than September 30, 1988. Requires hospitals which receive more than $10 million in Medicare payments during a cost reporting period beginning in FY 1991 or a subsequent year (or any other hospital, at the Secretary's discretion) to file the annual reports electronically.

(b) Conformity of Hospital Cost Reporting Periods.—Requires each hospital, other than one owned by State or local government, to establish a cost reporting year ending on March 31, June 30, September 30, or December 31. Permits the Secretary to make grants of up to $100,000 from the Hospital Insurance Trust Fund to assist hospitals in changing to an accounting year ending on September 30.

(c) Hospital Cost Data Base.—No provision.

Effective date.—(a) Applies to hospital cost reporting periods beginning on or after October 1, 1988; (b) applies to cost reporting periods beginning on or after January 1, 1989.

Senate amendment

(a) In General.—No provision.

(b) Conformity of Hospital Cost Reporting Periods.—No provision.

(c) Hospital Cost Data Base.—Requires the Secretary to develop two data bases on operating costs of inpatient hospitals, one for a representative sample of hospitals, the other for all hospitals participating in Medicare.

Provides that the data base on the sample of hospitals would be for use by Congress and the Secretary in determining annual increases in PPS rates and target amounts for PPS-exempt hospitals, and for evaluating other payment adjustments and legislative, regulatory, or budgetary changes. In selecting the sample, the Secretary is to choose PPS hospitals with cost reporting periods beginning in the first 4 months of the Federal fiscal year and, to the extent practicable, provide adequate representation of small rural hospitals, sole community hospitals, and rural referral centers. The Secretary is required to report to Congress on this data base no later than October 1, 1988.

Provides that the Secretary is to develop and place into effect the data base for all hospitals no later than June 1, 1989. The data base would be updated at least once every quarter and include data for the 12-month period preceding each update. Data could be drawn from preliminary cost reports, so long as the Secretary made available an update analysis of the differences between preliminary and settled cost reports.

Provides that, for cost reporting periods beginning on or after October 1, 1989, the Secretary is required to place into effect a standardized electronic cost reporting format, developed in consultation with hospital industry representatives. The Secretary could delay or waive implementation of the format for small or rural hospitals, hospitals with a small percentage of Medicare volume, or others for whom implementation would result in financial hardship.

Effective date.—Enactment.

Conference agreement

The conference agreement includes the Senate amendment with modifications. The provision regarding the development of a data base from the sample of all PPS hospitals with cost reporting periods beginning in the first four months of the Federal fiscal year, is not included. The Secretary is required to conduct a demonstration project on hospital reporting in two states for a three year period. Within one year of enactment, the Secretary must develop a reporting format to collect information on hospital costs, revenues and charges, similar to the formats used in the statewide reporting systems in California and New York. The Secretary is required to implement the reporting format to collect data in two states for the remaining two years.

In selecting the two demonstration states, the Secretary must include one state which presently has a uniform reporting system. The conferees intend that the Secretary will select the State of California to meet this requirement. The Secretary is also required to select the second demonstration State from among those States which do not presently operate such a system. The conferees intend that compliance with the requirements of the new reporting system will be mandatory for all hospitals located in a demonstration State.

The Secretary is required to set aside at least $1 million per year from existing funds for research and demonstrations for development of the reporting format and at least $2 million per year from existing funds for program operations for data collection and analysis. Total funds expended for these projects may not exceed $15 million over the three year period.

The General Accounting Office (GAO) is required to evaluate the adequacy of the existing reporting system and the costs and benefits of the reporting system developed in the demonstration project. GAO is also required to make recommendations to the Congress regarding improvements in hospital reporting systems and in methods of data analysis and display to provide better support for policy making on hospital payment issues.

The conferees commend the Secretary for recent improvements in the transmittal of data from the hospital cost reporting system. However, further improvements can be attained. The conferees

wish to make clear that we (they) expect the Secretary to proceed expeditiously to analyze the data processing systems under his control in order the expedite the flow of data from hospital to intermediaries to decision-makers within the Department and the Congress.

6. Delay in Effective Date for Standards for Organ Procurement (Section 4080 of House bill; Section 4001(q) of Senate amendment).

Present law

The Omnibus Budget Reconciliation Act of 1986 provided that Medicare payments for organ procurement would not be made unless the organ procurement agency involved met specified requirements and was designated by the Secretary as the sole procurement agency for its service area.

The law also required Medicare-participating hospitals to establish protocols for making a routine inquiry for organ donation by potential donors. In addition, it required all hospitals performing transplants, as a prerequisite to participation in Medicare, to be members of the National Organ Procurement and Transplantation Network.

Under the Omnibus Budget Reconciliation Act of 1986, these provisions were originally to be effective as of October 1, 1987. The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, however, changed this effective date to November 21, 1987.

House bill

Extends the effective date by which the Secretary must complete the organ procurement agency designation process to April 1, 1988.

Effective date.—Enactment.

Senate amendment

Extends to December 31, 1988, the effective date by which the Secretary must complete the organ procurement agency designation process, the effective date for the requirements for hospital protocols for organ procurement, and the effective date for requiring hospitals to be members of the Network.

Effective date.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

Conference agreement

The conference agreement includes the Senate amendment with modifications. The delay would only apply to the designation of organ procurement organizations, effective March 31, 1988. Payments for organ procurement would be assured as if this provision had been included in OBRA.

7. Raising Threshold for Prospective Payment for Skilled Nursing Facilities to 2,500 Patient Days (Section 9205 of House bill)

Present law

Skilled nursing facilities (SNFs) which provided fewer than 1,500 days of care per year to Medicare patients during the preceding cost reporting period are offered the option of being paid a prospective rate rather than being reimbursed retrospectively on the basis

of reasonable costs actually incurred. By accepting the prospective payment method, these SNFs have fewer paperwork requirements.

The prospective payment rates are set at 105 percent of the average per diem reasonable routine service and capital-related costs of routine SNF services for all urban and rural skilled nursing facilities in the region. The rates are separately calculated for SNFs located in urban areas and for SNFs located in rural areas. The prospective rates exclude the reasonable costs of ancillary services; these costs are reimbursed separately. The rates also are adjusted to reflect differences in wage levels among urban areas and rural areas within each region. The prospective urban or rural regional per diem rate for a SNF may not exceed the per diem routine service cost limit otherwise applicable to that facility after taking into account differences in average per diem capital costs by type and location of facility.

Prospective payment on this basis took effect for facilities that elected such payment for cost reporting periods beginning on or after October 1, 1986.

House bill

Raises the maximum number of days of care from 1,500 to 2,500 a SNF may provide to Medicare beneficiaries before losing the option of prospective payment.

Effective date.—Applies to cost reporting periods beginning on or after October 1, 1989.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

8. Nursing Home Reforms (Sections 9211-9214 and 4111-4117 of House bill; Section 4051 of Senate amendment)

See: "E. Medicare and Medicaid Nursing Home Standards Reform Provisions".

9. Miscellaneous and Technical Provisions Relating to Part A (Section 9206 of House bill; Sections 4001 (c), (k) (l), (m), (n), and 4086 of Senate amendment)

Present law

(a) Responsibilities of Medicare Hospitals in Emergency Cases.—A hospital participating in the Medicare program which has an emergency department is generally required to provide emergency treatment sufficient to stabilize the patient's condition to any person who comes to the hospital with an emergency medical condition or in active labor. If the hospital determines that such a condition exists, it must (1) provide, within its capabilities, examination and treatment to stabilize the medical condition or to administer to the labor; or (2) provide for an appropriate transfer to another medical facility if a physician certifies that the benefits of the transfer outweigh the increased risks (or if the patient requests the transfer).

A hospital which violates these requirements is subject to suspension or termination of its Medicare provider agreement. The

hospital and the responsible physician are each subject to a civil monetary penalty of not more than $25,000 for each violation.

(b) Clarification of Section 1886(c) State Waiver Authority.—State hospital cost control systems which received their waivers before the enactment of the Social Security Amendments of 1983 (the law which established Medicare's prospective payment system for inpatient hospitals) may have their effectiveness judged in one of two ways. The Secretary normally judges the system's effectiveness on the basis of the State's rate of increase in total Medicare payments for hospital inpatient services as compared to the national rate of increase in such payments. At the request of the State, however, the Secretary is required to judge the system's effectiveness on the basis of the rate of increase in aggregate payments per admission or per discharge in the State as compared to the rate of increase in the nation.

The Secretary may deny such a request for cost reporting periods beginning on or after October 1, 1986.

(c) Clarification of Section 1814(b) State Waiver Authority.—Under certain conditions, the Secretary may continue payment to hospitals under an alternative State hospital reimbursement system, which was initially established as a demonstration under Section 402 of the Social Security Amendments of 1967 or Section 222 of the Social Security Amendments of 1972, until the Secretary determines that: (1) a third party payer reimburses a hospital in the State on a basis other than the alternative system; or (2) the rate of increase in Part A costs per inpatient hospital admission for the previous 3-year period is greater than the national rate of increase in such costs.

(d) Continuation of Bad Debt Recognition for Hospital Services.—By regulation, Medicare reimburses hospitals for Medicare bad debt, defined as the unrecovered costs associated with unpaid Medicare deductible and coinsurance amounts. In order for the unpaid deductible and coinsurance amounts to be considered bad debt, the amounts must be related to covered services furnished to a beneficiary and the hospital must meet certain collection criteria.

(e) Hospital Outlier Payments and Policy.—Under the prospective payment system (PPS), additional amounts are paid to hospitals for cases, known as outliers, which have extremely long lengths of stay or extraordinary high costs compared to most patients classified in the same diagnosis related group (DRG). Cases which have a length of stay which exceeds the applicable length of stay threshold for the DRG are paid 60 percent of a per diem amount for each covered day beyond the threshold. Cases which do not qualify as "day" outliers but have estimated costs in excess of the applicable cost threshold for the DRG ("cost outliers") are paid 60 percent of costs above the threshold. The 60 percent factor, applied in determining extra payments for day and cost outliers, is determined by the Secretary in regulations.

The law requires that total outlier payments to all hospitals represent no less than 5 percent nor more than 6 percent of the total PPS payments based on the DRGs projected for the fiscal year. Outlier payments are financed by an offsetting reduction in the Federal portion of the DRG rates, with separate set-aside factors for urban and rural hospitals.

In a notice published on June 10, 1987, the Secretary proposed to make substantial changes in the payment policy for outlier cases, effective for discharges occurring during fiscal year 1988. In the final notice published on September 1, 1987, however, the Secretary decided not to adopt any change in the current policy.

(f) Miscellaneous Accounting Provision.—The Omnibus Budget Reconciliation Act of 1986 requires the Secretary to treat certain hospitals with accounting years ending on September 27, 28, or 29 as if the accounting years ended on September 30.

(g) Designation of Pediatric Hospitals as Meeting Certification as Heart Transplant Facility.—Under current law, the Secretary certifies cardiac transplant centers for Medicare participation and for Medicare reimbursement for transplant services. Under current regulations, no pediatric centers are certified.

(h) Waiver of Inpatient Limitations for Connecticut Hospice, Inc.—Medicare-certified hospices are required to maintain no more than 20 percent of total days as inpatient days. The remaining percentage of days would be home care days. The Omnibus Budget Reconciliation Act of 1986 provided a 2-year waiver (until October 1, 1988) for Connecticut Hospice, Inc. from the 20 percent/80 percent inpatient/home care day requirement, provided that the percentage of inpatient days does not exceed 50 percent.

(i) Revision of Appointment Process for Prospective Payment Assessment Commission.—When appointing members to the Prospective Payment Assessment Commission (ProPAC), the Director of the Office of Technology Assessment (OTA) is required to consult with a variety of national organizations in seeking nominations.

(j) Rural Impact Regulatory Analysis.—There is currently no requirement that the Secretary include, in a proposed final rule, an analysis of the regulation's impact on rural areas.

(k) Psychologists Services Furnished to Hospital Inpatients.—Inpatient hospital services covered under Medicare include the category of "other diagnostic or therapeutic items or services, furnished by the hospital or others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or others under such arrangements." Under this category Part A covers the inpatient hospital services of psychologists employed by or providing services under arrangements with hospitals.

(l) Hospital Condition of Participation Related to Individual Responsible for Care of Patient.—Medicare's conditions of participation for hospitals require that every patient at the hospital be under the care of a physician. Medicare does not generally include psychologists under the definition of a physician.

Under some State laws, a psychologist may admit a patient to a hospital and treat the patient. The Civilian Health and Medical Program of the Uniform Services (CHAMPUS) and the Federal Employees Health Benefits Act (FEHBA) currently allow coverage of services of psychologist in accordance with State law.

Because Medicare's conditions of participation apply to all patients in the hospital, not only to Medicare patients, the Medicare conditions may negate State law and the CHAMPUS and FEHBA policies for any Medicare-participating hospital.

(m) Technical Part A Amendments.—(1) Technical Changes.—Current law contains a number of technical errors.

(2) Disproportionate Share Hospitals.—Additional payments are made to PPS hospitals that serve a disproportionate share of low-income patients. Under one criterion, a hospital located in an urban area, which has 100 or more beds, may receive such payments if it can demonstrate that more than 30 percent of its inpatient care revenues (excluding any Medicare or Medicaid revenues) are provided by State and local government payments for indigent care.

There has been controversy over the interpretation of current statutory language which refers to inpatient care revenues as "net inpatient care revenues" in one location, but refers to "such revenues" has been interpreted to mean either gross inpatient revenues (revenues the hospital would receive if all patients paid the hospital's full charges) or net inpatient revenues (gross revenues minus bad debts, contractual allowances, and charity care).

House bill

(a) Responsibilities of Medicare Hospitals in Emergency Cases.—Increases the maximum civil monetary penalty to $50,000 and authorizes the Secretary to bar physicians who violate the requirements from participating in the Medicare program for up to five years.

Effective date.—Applies to actions occurring on or after the date of enactment of this Act.

(b) Clarification of Section 1886(c) State Waiver Authority.—Clarifies that either the State or the entity responsible for the operation of the State hospital cost control system, may exercise the option regarding the basis on which the Secretary judges the system's effectiveness.

Effective date.—Applies to cost reporting periods beginning on or after October 1, 1983.

(c) Clarification of Section 1814(b) State Waiver Authority.—Requires the Secretary, in comparing the rate of increase in Medicare costs per admission for the alternative reimbursement system with the rate of increase for all hospitals, to make the comparison over the period from October 1, 1983 to the end of the most recent date for which annual data are available.

Effective date.—Enactment.

(d) Continuation of Bad Debt Recognition for Hospital Services.—Prohibits the Secretary from making any change in policy in effect on August 1, 1987 on payments for Medicare bad debt.

Effective date.—Enactment.

(e) Hospital Outlier Payments and Policy.—(1) Increase in Outlier Payment for Burn Center DRGs.—Increases payments for outlier cases classified in DRGs relating to burns by changing the percentage factor applied in determining outlier payments from 60 percent to 90 percent. Thus burn cases which stay beyond the appropiate day outlier threshold would receive 90 percent of the applicable per diem for each outlier day. Cost outliers in burn DRGs would receive 90 percent of the cost of care above the cost outlier threshold. This reimbursement level would apply to discharges occurring during fiscal years 1988 and 1989.

(2) Burn Study.—Requires the Secretary to study the PPS payment amounts for burn cases. The Secretary is required to recommend to Congress appropriate adjustments to these amounts to assure that the costs of treating burn patients are being adequately reimbursed.

(3) Limitation on Changes in Outlier Regulations.—Prohibits the Secretary from issuing any final regulation which changes the method of payment for outlier cases, after the date of enactment of this Act and before October 1, 1988.

(4) Study on Outlier Payments.—Requires the Chairman of the Prospective Payment Assessment Commission to report to Congress and the Secretary, by not later than June 1, 1988, on the method of payment for outlier cases.

Effective date.—Enactment.

(f) Miscellaneous Accounting Provision.—Amends prior law for hospitals with accounting years ending on September 27, 28, or 29 in 1985 and are located in a State in which inpatient hospital services were paid in fiscal year 1985 pursuant to a statewide demonstration project under Section 402 of the Social Security Amendments of 1967 and Section 222 of the Social Security Amendments of 1972. If such a hospital elects, by notice to the Secretary by January 1, 1988, the hospital would receive payments for: (1) the first 7 months of the cost reporting period, which began during September 1985, at a 75 percent hospital-specific rate and a 25 percent DRG rate; and (2) the remaining 5 months at a 50 percent hospital-specific rate and a 50 percent DRG rate.

Effective date.—Applies as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(g) Designation of Pediatric Hospitals as Meeting Certification as Heart Transplant Facility.—Requires the Secretary to determine that a pediatric hosptial meets the criteria of a Medicare heart transplant facility if: (1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria, (2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and (3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities services, and personnel that are required by pediatric heart transplant patients. (See also Item 9, Part II.B.)

Effective date.—Enactment.

(h) Waiver of Inpatient Limitations for Connecticut Hospice, Inc.—Provides that the existing 2-year waiver from the 20 percent/80 percent inpatient/home care day requirement is permanently waived.

Effective date.—Enactment.

(i) Revision of Appointment Process for Prospective Payment Assessment Commission.—Section 9206.—Repeals the requirement that the OTA Director seek nominations from various organizations. The OTA Director is required to appoint individuals with national recognition for their expertise in health economics, hospital reimbursement, hospital financial management, and other related fields.

Section 4075 and 4076.—No provision.

Effective date—

Section 9206.—Applies to appointments made after the date of enactment of this Act.

(j) Rural Impact Regulatory Analysis.—

Section 9206.—Requires the Secretary—in publishing notices of proposed and final regulations relating to Part A of Medicare—to include an analysis of the impact of such regulations on health care in rural hospitals.

Effective date.—

Section 9206.—Applies to regulations (and proposed regulations) issued on or after January 1, 1988.

Section 4073.—Applies to regulations published more than 120 days after the date of enactment of this Act.

(k) Psychologists Services Furnished to Hospital Inpatients.—No provision.

(l) Hospital Condition of Participation Related to Individual Responsible for Care of Patient.—No provision.

(m) Technical Part A Amendments.—(1) Technical Changes.—Corrects a number of technical errors.

(2) Disproportionate Share Hospitals.—Clarifies that a hospital would qualify if more than 30 percent of its net inpatient care revenues (excluding any Medicare or medicaid revenues) are provided by State and local government payments for indigent care.

Effective date.—Enactment.

Senate amendment

(a) Responsibilities of Medicare Hospitals in Emergency Cases.—No provision.

(b) Clarification of Section 1886(c) State Waiver Authority.—No provision.

(c) Clarification of Section 1814(b) State Waiver Authority.—Similar provision.

Effective date.—Enactment.

(d) Continuation of Bad Debt Recognition for Hospital Service.—Similar provision, except that it specifies that the Secretary is prohibited from issuing regulations to alter the method in effect on March 31, 1987 for making payments for Medicare bad debt (including criteria for what constitutes a reasonable collection effort).

Effective date.—Enactment.

(e) Hospital Outlier Payments and Policy.—(1) Increase in Outlier Payments for Burn Center DRGs.—Similar provision, except that it includes a budget neutrality provision and clarifies that, it shall apply to discharges occurring on or after January 1, 1988, and before October 1, 1989.

(2) Burn Study.—Requires ProPAC to conduct a study of possible modifications to PPS that will provide more adequate and appropriate payments with respect to burn outlier cases, including a recommendation with respect to whether separate payment rates should be established for burn center hospitals. ProPAC is required to report the results of the study to the Congress by April 1, 1988.

(3) Limitation on Changes in Outlier Regulations.—No provision.

(4) Study on Outlier Payments.—Requires the Secretary to include in the annual report to Congress regarding the operation and administration of the Medicare program a comparison of hospitals

located in an urban area and hospitals located in a rural area regarding the amount of reductions and additional payments for outliers.

Effective date.—(1) Applies to discharges occurring on or after January 1,1988, and before October 1, 1989, (2) and (4) Enactment.

(f) Miscellaneous Accounting Provision.—No provision.

(g) Designation of Pediatric Hospitals as Meeting Certification as Heart Transplant Facility.—No provision.

(h) Waiver of Inpatient Limitation for Connecticut Hospice, Inc.—Identical provision.

Effective date.—Enactment.

(i) Revision of Appointment Process for Prospective Payment Assessment Commission.—No provision.

(j) Rural Impact Regulatory Analysis.—Requires the Secretary—whenever he or she publishes a general notice of proposed rulemaking for any rule or regulation proposed under Medicare, Medicaid, or the peer review organization program, that may have a significant impact on a substantial number of small rural hospitals—to prepare and make available for public comment an initial regulatory impact analysis.

Requires that analysis to describe the impact of the proposed rule or regulation on such hospitals and is required to set forth, with respect to small rural hospitals, the matters required under Section 603 of Title V, United States Code—to be set forth with respect to small entities.

Requires the initial regulatory impact analysis (or a summary) to be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

Requires the Secretary—whenever he or she promulgates a *final* version of a rule or regulation for which an initial regulatory impact analysis is required by the above—to prepare a final regulatory impact analysis with respect to the final version of the rule or regulation.

Requires that analysis to describe the impact of the proposed rule or regulation on such hospitals and is required to set forth, with respect to small rural hospitals, the matters required under Section 603 of Title V, United States Code—to be set forth with respect to small entities.

Requires the Secretary to make copies of the final regulatory impact analysis available to the public and to publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

Requires—if a regulatory flexibility analysis is required by Chapter 6 of Title V, United States Code, for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.

Effective date.—Applies to regulations proposed more than 30 days after the date of the enactment of this Act.

(k) Psychologists Services Furnished to Hospital Inpatients.—Specifies that Medicare coverage for "other diagnostic or therapeutic items or services" furnished to hospital inpatients by "others under arrangements with them made by the hospital" includes the services of clinical psychologists (as defined by the Secretary). This

provision clarifies that Part A covers the inpatient hospital services of clinical psychologists.

Effective date.—Enactment.

(l) Hospital Condition of Participation Related to Individual Responsible for Care of Patient.—Modifies Medicare's conditions of participation so that the requirement that every patient at the hospital be under the care of a physician applies only to Medicare patients at the hospital, thereby allowing State law to apply to other patients.

Effective date.—Enactment.

(m) Technical Part A Amendments.—No provision.

Conference agreement

(a) Responsibilities of Medicare Hospitals in Emergency Cases.—The conference agreement includes the House provision.

(b) Clarification of Section 1886(c) State Waiver Authority.—The conference agreement includes the House provision with a modification. The conference agreement does not include the clarification contained in the House provision. The conference agreement prohibits the Secretary from recouping, or otherwise reducing payments to Massachusetts hospitals for any alleged overpayments which may have occurred during the period of the Waiver agreement, through January 1, 1989.

(c) Clarification of Section 1814(b) State Waiver Authority.—The conference agreement includes the House provision.

The conferees note that there is confusion regarding the application of the sequester to Medicare payments to providers paid under a waiver held by the State of New Jersey. The State of New Jersey is free to provide an update to hospitals, subject to the terms of its waiver. No reduction in payments under the sequester is intended beyond the reduction experienced by other hospitals.

(d) Continuation of Bad Debt Recognition for Hospital Services.—The conference agreement includes the House provision, with an amendment to prohibit the Secretary from modifying the criteria for what constitutes a reasonable collection effort) in effect on March 31, 1987.

(e) Hospital Outlier Payments and Policy.—The conference agreement includes the House provision with modifications. The budget neutrality provision required by the Senate amendment is included. The conference agreement also requires the Secretary to include in the annual report to Congress (regarding the operation and administration of the Medicare program) a comparison of the amount of reductions and additional payments for outliers for hospitals located in an urban area and hospitals located in a rural area. The conference agreement does not include the ProPAC study of the method of payment for outliers required by the House provision.

(f) Miscellaneous Accounting Provision.—The conference agreement includes the House provision.

(g) Designation of Pediatric Hospitals as Meeting Certification as Heart Transplant Facility.—The conference agreement includes the House provision.

The conferees note that the conference agreement should not be construed as an endorsement of the provision of cardiac transplant services by consortia of hospitals.

(h) Waiver of Inpatient Limitations for Connecticut Hospice, Inc.—The conference agreement includes the House provision.

(i) Revison of Appointment Process for Prospective Payment Assessment Commission.—The conference agreement includes the House provision, with a modification to require the Commission to include a mix of professionals, broad geographic representation, and balance between urban and rural representatives.

(j) Rural Impact Regulatory Analysis.—The conference agreement includes the Senate amendment.

(k) Psychologists Services Furnished to Hospital Inpatients.—The conference agreement includes the Senate amendment.

(l) Hospital Condition of Participation Related to Individual Responsible for Care of Patients.—The conference agreement includes ths Senate amendment.

(m) Technical Part A Amendments.—The conference agreement includes the House provisions.

10. Elimination of Periodic Interim Payment System (PIP) for Certain Hospitals (Section 4004(a)–(c) of Senate Amendment).

Present law

OBRA requires the Secretary, under certain circumstances, to continue making payments to PPS hospitals for inpatient services furnished to Medicare beneficiaries on a periodic interim payment (PIP) basis, rather than on the basis of bills actually submitted.

One such circumstance involves certain disproportionate share hospitals (DSH), hospitals which receive additional payments under PPS because they serve a disproportionate share of low income patients. A DSH which has a disproportionate share adjustment percentage of at least 5.1 percent, continues to receive periodic interim payments if it meets certain conditions: (1) it requests such payments; (2) it was being paid on that basis as of June 30, 1987, and (3) it continues to meet the other eligibility requirements that were in effect on October 1, 1986. P.L. 100–119 provides that a law or regulation that has the effect of transferring outlays or revenues from one fiscal year to an adjacent fiscal year cannot be treated as altering the budget deficit, unless it meets certain conditions such as, including a stipulation that the transfer "is a necessary (but secondary) result of a significant policy change".

House bill

No provision.

Senate amendment

Prohibits payment on the basis of periodic interim payments for disproportionate share hospitals on or after July 1, 1990.

Authorizes the Secretary to continue payments to a DSH on a PIP basis after that date (for such period as the Secretary deems appropriate) if the hospital demonstrates to the Secretary that discontinuing PIP payments would pose an immediate threat to the hospital's ability to operate.

Requires the Secretary to defer the PIP payments that would otherwise be made to any DSH hospitals during at least the last 21 days of fiscal year 1989, until fiscal year 1990.

Stipulates that the transfer of outlays due to this provision "is a necessary (but secondary) result of a significant policy change".

Effective date.—Effective on enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

B. MEDICARE PROVISIONS (PARTS A AND B)

1. Prompt Pay Standard (Sections 9231 and 4074. of House bill; Sections 4011 (a) ands (c) of Senate amendment).

Present law

At least 95 percent of "clean" claims for Part A services (for Medicare claims not paid on periodic interim payment basis) are required to be paid within 30 calendar days after the day on which a clean claim is recieved in FY 1987, 26 days in FY 1988, 25 days in FY 1989, and 24 days in FY 1990 and thereafter. A clean claim is one which has no defect or impropriety (including lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevent timely payment from being made

If payment is not made for these part A claims by the applicable number of days after the date on which a clean claim is received, interest is required to be paid beginning on the day after the date on which payment was due, and ending on the date payment is made.

The requirements for part B claims are similar, except that for participating physicians the applicable number of days for 95 percent of clean claims to be paid is 19 days in FY 1988, 18 for FY 1989, 17 for FY 1990 and thereafter. Interest accrues for payment not paid within the specified time period.

Current law does not contain any standard regarding the average time over which clean claims shall be paid.

Under P.L. 100-119, the Sercretary is prohibited from taking any action primarily intended, to delay the processing of claims until November 21, 1987.

House bill

(a) Average Time Period.—

Section 9331.—Requires the Secretary to manage a claims payment policy resulting in a specified average time period between receipt of a clean claim and payment by fiscal intermediaries and carriers. In FY 1988, this policy is to apply only to Part A; the average time period will be 20 days. In fiscal years 1989 and 1990, this policy will apply to both Part A and Part B. The average time period will be 23 days in FY 1989 and 25 days in FY 1990.

Requires the Secretary to publish in the Federal Register notice of the particular average payment period required of each fiscal intermediary and carrier for the fiscal year. The notice shall be pub-

lished (within 30 days after the enactment for FY 1988 and before September 1, 1988 and September 1, 1989 for fiscal years 1989 and 1990, respectively).

Requires the Secretary to provide, to the maximum extent feasible, consistent with the time periods established, that the difference between the average payment period required of each intermediary or carrier for a fiscal year and the actual average payment period of the intermediary or carrier for the previous fiscal year shall be approximately equal.

Section 4074.—Prohibits the Secretary from delaying payments to achieve an increase in the average period of payments under Part B.

(b) Payment Floor Standards.—No provision.

(c) General Accounting Office Report.—

Section 9231.—Requires the Comptroller General to review and report, by March 31, 1988, to the House Committee on Ways and Means and the Senate Committee on Finance on the implementation of the amendments made by this section.

Section 4074.—No provision.

(d) Prohibition of Other Policies Intended to Slow Down Medicare Payments.—

Section 9231.—Prohibits the Secretary from issuing, after the date of enactment of this Act and before October 1, 1990, any other final regulation, instruction, or other policy change (other than those needed to implement this provision) which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims.

Section 4074.—No provision. [See (a) above.]

(e) Conforming Amendments to Prompt Payment Provisions.—

Section 9231.—Increases the applicable number of days by which at least 95 percent of "clean" claims for Part A services (for Medicare claims not paid on a periodic interim payment basis) are required to be paid for each of the next three fiscal years. For Part A and for Part B, (other than for participating physicians), the ceiling is 28 calendar days for fiscal years 1988, 1989, and 1990 (and 24 days thereafter). For participating physicians the ceiling is 21 calendar days for fiscal years 1988, 1989, and 1990 (and 17 days thereafter).

Section 4074.—No provision.

(f) Budget Considerations.—No provision.

Effective date.—

Section 9231.—Applies on or after October 1, 1987.

Section 4074.—Applies on or after the date of enactment of this Act.

Senate amendment

(a) Average Time Period.—No provision.

(b) Payment Floor Standards.—Establishes a payment floor for Part A and Part B claims, requiring that no Medicare claim shall be issued, mailed, or otherwise transmitted within the applicable number of calendar days after the date on which the claim is received. The applicable number of days shall be 10 days for claims received in the 3-month period beginning July 1, 1988, 11 days for

the 12-month period beginning October 1, 1988, and 12 days for the 12-month period beginning October 1, 1989.

Requires the Secretary to provide for such timely amendments to agreements with fiscal intermediaries, contracts with carriers, and regulations, to the extent necessary to implement these provisions on a timely basis.

(c) General Accounting Office Report.—No provision.

(d) Prohibition of Other Policies Intended to Slow Down Medicare Payments.—No provision.

(e) Conforming Amendments to Prompt Payment Provisions.—No provision.

(f) Budget Considerations.—Provides that for purposes of Section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this section [(b) above] is a necessary (but secondary) result of a significant policy change.

Effective date.—(b) Applies to claims received on or after July 1, 1988. (f) Enactment.

Conference agreement

(a) Average Time Period.—The conference agreement does not include the House provision.

(b) Payment Floor Standards.—The conference agreement includes the Senate amendment, with modifications. The applicable number of days shall be 10 days for the 3-month period beginning July 1, 1988, and 14 days for the 12-month period beginning October 1, 1988.

(c) General Accounting Office Report.—The conference agreement does not inlcude the House provision.

(d) Prohibition of Other Policies Intended of Slow Down Medicare Payments.—The conference agreement includes the House provision.

(e) Conforming Amendments to Prompt Payment Provisions.—The conference agreement does not include the House provision.

(f) Budget Consideration.—The conference agreement includes the Senate amendment.

2. Health Maintenance Organization (HMOs) and Competitive Medical Plans (CMPs) (Sections 9232, 4023, and 4079 of the House bill; Section 4092 of the Senate amendment

Present law

(a) Broadening Use of Civil Monetary Penalties and Intermediate Sanctions Against HMOs/CMPs.—HMOs/CMPs must provide assurances to the Secretary that they will not expel or refuse to reenroll any individual on the basis of health status or need for health services.

For each instance in which an HMO/CMP fails substantially to provide medically necessary items and services to a beneficiary, the Secretary may impose a $10,000 civil monetary penalty. No other sanctions short of contract termination are available for most other kinds of possible HMO/CMP contract or legal violations.

(b) Capitation Demonstration Projects.—The Secretary is authorized to waive provisions of the Act in order to conduct demonstration projects.

(c) Treatment of Michigan Blue Care HMO Network under 50 Percent Rule.—In order to qualify for a Medicare risk contract, an HMO or CMP must have an enrolled population of which not more than 50 percent are Medicare or Medicaid beneficiaries. Blue Care, a Michigan Blue Cross/Blue Shield subsidiary, enrolles individuals and then assigns them to individual HMOs also owned by Michigan Blue Cross/Blue Shield. If Blue Care is the corporate entity contracting directly with Medicare, the 50 percent test would be applied to Blue Care, rather than the individual HMOs contracting with Blue Care.

(d) Assignment of HMO Members for Certain Organizations.—If an HMO or CMP establishes an affiliate or subsidiary as an independent wholly-owned corporation and the affiliate seeks a Medicare risk contract, it must meet the 50 percent test on its own, regardless of the population of the parent organization.

(e) Coverage of Social Worker Services Furnished by an HMO to Its Members.—HMOs, CMPs must make available to Medicare enrollees the full range of Medicare-covered services. In addition, they are responsible for services not ordinarily coverd by Medicare; services of a nurse practitioner or clinical psychologist are covered if the same services would be covered by Medicare if it had been provided by a physician.

(f) Delay in Effective Date of Physician Incentive Rules for Health Maintenance Organizations.—OBRA provided for civil money penalties if a hospital or an HMO contracting with Medicare or Medicaid made a direct or indirect payment to a physician as an inducement to reduce or limit services to beneficiaries under his or her care; the physician receiving the payment could also be penalized. For HMOs and CMPs, the provision applies to such payments made on or after April 1, 1989.

(g) Temporary Waiver for Watts Health Foundation.—An HMO/CMP with a Medicare risk contract must have an enrolled population of which not more than 50 percent are Medicare or Medicaid beneficiaries. Waivers are permitted under certain conditions. OBRA narrowed the conditions for waivers but provided that an HMO/CMP which had a waiver in effect on the date of enactment could be permitted to retain the waiver if the Secretary determined that it was making reasonable efforts to comply with the 50 percent limit or to adhere to a schedule of compliance. The Secretary is authorized to impose sanctions if the organization fails to adhere to an agreed schedule.

(h) Extension of Waivers for Social Heath Maintenance Organizations.—The Deficit Reduction Act of 1987 (DEFRA, P.L. 98-369) required the Secretary to grant 3-year waivers for demonstrations of social health maintenance organizations, which provide integrated health and social services on a prepaid capitated basis. The Secretary was required to submit a final report on the demonstrations to Congress no later than 42 months after enactment (that is, by January 1988).

(i) HMO Payments for Hospital Services.—An HMO/CMP with a Medicare risk contract may elect to have the Medicare program pay directly for hospital inpatient and skilled nursing facility services which are furnished to beneficiaries and for which the HMO/

CMP is liable. The amounts expended are deducted from future payment to the HMO/CMP.

(j) Discount and Advance Determination of Payments.—Payment rates for an HMO/CMP are established annually.

(k) Post-Contract Protection for CMP Enrollees.—Priority under the Bankruptcy Code.—No provision.

(l) Task force on Medicare Capitation.—No provision.

(m) Disabled Individual Classification.—In computing the adjusted average per capita cost (AAPCC) for HMO/CMP rate setting, the Secretary may establish classes of beneficiaries according to age, disability status, and other factors. The Secretary has established classes of disabled beneficiaries under age 65 and classes of beneficiaries aged 65 and over, but no distinct class of persons who are both disabled and aged 65 and over.

(n) Two-Year Extension on Period for Benefit Stabilization.—Each HMO/CMP must develop an adjusted community rate (ACR), an estimate of what it would charge a private member comparable to a Medicare beneficiary for the scope of services covered under its Medicare contract. If an HMO/CMP's ACR is lower than its average project Medicare capitation payment, the HMO/CMP must use the difference to fund supplemental benefits or accept a reduced capitation rate. Alternatively, it may request that a portion of the difference be deposited in a benefit stabilization fund (within the Part A and Part B Trust Funds). The fund may be drawn upon in a future year if the difference between the ACR and the Medicare capitation rate is insufficient to continue financing the HMO/CMP's package of supplemental benefits. A stabilization fund may not be established for any contract period beginning more than 4 years after the enactment of the Deficit Reduction Act of 1984, or July 18, 1988.

(o) Notice to enrollees.—No provision.

House bill

(a) Broadening Use of Civil Monetary Penalties and Intermediate Sanctions Against HMOs/CMPs.—

Section 9232.—Provides that HMOs/CMPs may not engage in any practice which can reasonably be expected to deny or discourage (on the basis of health status) enrollment or reenrollment.

Provides that the Secretary may impose civil monetary penalties or sanctions when he determines that an HMO/CMP denies medically necessary services, imposes charges on enrollees in excess of those permitted by law, violates provisions relating to expulsion of or refusal to reenroll enrollees, enrolls beneficiaries without their knowledge or consent, or misrepresents or falsifies information provided to the Secretary or an enrollee regarding costs, benefits or services provided.

Provides for civil monetary penalties of not more than $25,000 for each violation; penalties may be not more than $100,000 for cases of denial of enrollment on the basis of health status or falsification of information provided to the Secretary. The Secretary may also suspend new enrollments or suspend payments to the HMO/CMP until he is satisfied that violations will not recur. Incorporates existing provisions on administration of civil monetary penalties.

Sections 4023 and 4079.—No provision.

(b) Capitation Demonstration Projects.—

Section 9232.—Prohibits the Secretary from conducting any demonstration projects which involves capitation payments to an organization not eligible for an HMO/CMP contract and which (1) will result in Medicare expenditures of more than $15,000,000 in any year without the specific authorization and direction of Congress; or (2) provides for a capitated payment rate in excess of the rates payable to risk-contracting HMOs under current law. The Comptroller General is required to report annually to Congress on any such demonstration conducted with an organization which is eligible for an HMO/CMP contract.

Sections 4023 and 4079.—No provision.

(c) Treatment of Michigan Blue Care HMO Network under 50 Percent Rule.—

Section 9232.—Provides that Blue Care may be deemed to meet the 50 percent Medicare and Medicaid enrollment limit if each of the participating HMOs separately meets the limit for its enrollees or assignees and no more than 20 percent of the enrollees or assignees of each HMO are Medicare beneficiaries.

Sections 4023 and 4079.—No provisions.

(d) Assignment of HMO Members for Certain Organizations.—

Section 9232.—Permits the enrollees of a subdivision, subsidiary, or affiliate HMO to have its members considered as members of the parent organization for the purposes of the 50 percent test during the period before October 1, 1992. The parent organization must have contracted with a State Medicaid agency to provide prepaid services prior to 1970, and must have members with a collectively bargained right to obtain services through the organization. The affiliate must meet all eligibility standards except the 50 percent test and must be wholly owned or controlled by the parent organization. The parent organization must guarantee the quality and solvency of the affiliate.

Sections 4023 and 4079.—No provision.

(e) Coverage of Social Worker Services Furnished by an HMO to Its Members.—

Section 4023.—Adds to the list of additional services covered for HMO or CMP enrollees services of a clinical social worker, along with services and supplies incident to such services, when the services would have been covered by Medicare if provided by a physician. Educational and experience criteria for clinical social workers are defined, with separate criteria for States which do and do not provide for licensure or certification of social workers.

Section 9232.—No provision.

(f) Delay in Effective Date of Physician Incentive Rules for Health Maintenance Organizations.—

Section 4079.—Delays the effective date of the rule for HMOs/CMPs to April 1, 1990.

Section 9232.—No provision.

(g) Temporary Waiver for Watts Health Foundation.—No provision.

(h) Extension of Waivers for Social Health Maintenance Organizations.—No provision.

(i) HMO Payments for Hospital Services.—No provision.

(j) Discount and Advance Determination of Payments.—No provision.

(k) Post-Contract Protection for CMP Enrollees.—Priority under the Bankruptcy Code.—No provision.

(l) Task Force on Medicare Capitation.—No provision.

(m) Disabled Individual Classification.—No provision.

(n) Two-Year Extension on Period for Benefit Stabilization.—No provision.

(o) Notice to enrollees.—No provision.

Effective date.—

Section 9232.—Enactment.

Section 4023.—Applies to services performed on or after January 1, 1988.

Section 4079.—Enactment.

(a) Broadening Use of Civil Monetary Penalties and Intermediate Sanctions Against HMOs/CMPS.—Increases the civil monetary penalty for failure to furnish medically necessary services to $25,000 for each failure. The Secretary may also impose civil monetary penalties or sanctions when he determines that an HMO/CMP imposes premiums on enrollees in excess of those permitted by law, violates provisions relating to expulsion of or refusal to re-enroll enrollees, engages in any practice which can reasonably be expected to deny or discourage (on the basis of health status) enrollment or reenrollment, or misrepresents or falsifies information provided to the Secretary, an enrollee, or any other entity. Civil monetary penalties for these kinds of violations may be not more than $10,000 for each violation. The Secretary may also suspend new enrollments or suspend payments to the HMO/CMP until he is satisfied that violations will not recur. Incorporates existing provisions on administration of civil monetary penalties.

(b) Capitation Demonstration Projects.—Requires the Secretary to conduct demonstrations to test alternative capitation payment methodologies. Demonstrations would be conducted in each of three areas:

(1) Computing a health status adjustment in the adjusted average per capita cost (AAPCC).

(2) Contracting with employer-related groups for voluntary enrollment of employees in a managed care program, with rates set on an experience basis.

(3) Accounting for geographic variations in cost in computing the AAPCC, considerating geographic bases which may provide more equitable payment than is provided by setting the AAPCC on a county-by-county basis. Demonstrations on this subject would be conducted primarily in geographic areas where HMO/CMP payment rates are below 80 percent of the median AAPCC for all counties within metropolitan statistical areas and could include HMOs/CMPs in urban areas which primarily serve populations from counties in which payment rates were below that percentage.

Requires the Secretary in carrying out the demonstrations to appoint, in consultation with the Congress, a panel of specialists to review the project and make recommendations on rate setting and measures to ensure quality of care. Authorizes $5 million in each of

fiscal years 1989 and 1990 for the demonstrations relating to geographic adjustments in rate setting.

(c) Treatment of Michigan Blue Care HMO Network under 50 Percent Rule.—Similar provision.

(d) Assignment of HMO Members for Certain Organizations.—Similar provision.

(e) Coverage of Social Worker Services Furnished by an HMO to Its Members.—No provision.

(f) Delay in Effective Date of Physician Incentive Rules for Health Maintenance Organizations.—No provision.

(g) Temporary Waiver for Watts Health Foundation.—Provides that an organization which had a pre-OBRA waiver of the 50 percent limit and which received at least $3 million in Public Health Service community or migrant health center grant funds in FY 1987 is exempt from the 50 percent limit until January 1, 1990. After that date, the organization would be eligible for a waiver on the same terms and subject to the same conditions as other HMO/CMPs.

(h) Extension of Waivers for Social Health Maintenance Organizations.—Required the Secretary to extend the waivers through September 30, 1992, under the same terms and conditions as under DEFRA. The Secretary is required to submit an interim report by January 1988, and a final report no later than March 31, 1993.

(i) HMO Payments for Hospital Services.—Reappeals the provision allowing direct Medicare payment of HMO/CMP hospital and skilled nursing facility charges. In the case of an HMO/CMP which had elected the direct payment option prior to October 1, 1987, hospitals or skilled nursing home facilities furnishing services to the HMO/CMP's Medicare enrollees are required to accept as payment in full from the HMP/CMP the amounts that would have been paid for the same services furnished to nonenrollees under Medicare reimbursement principles. The Secretary is required to furnish such an HMO/CMP with information (in machine readable form) on Medicare payment rates and cost passthroughs for inpatient services.

(j) Discount and Advance Determination of Payments.—Provides that the Secretary may, at the request of an HMO/CMP, enter into a multi-year contract and establish the annual rates for each year of the contract when the contract is entered into. The Secretary is permitted to discount the rates as he deems appropriate before entering into the contract.

(k) Post-Contract Protection for CMP Enrollees.—Priority under the Bankruptcy Code.—Requires an eligible organization which is not a federally qualified HMO to make assurances (satisfactory to the Secretary) that, if it should cease to provide services under the contract, it will provide or arrange supplemental coverage to enrolled beneficiaries. Supplemental coverage would continue for the duration of any exclusion period related to a preexisting condition.

Amends chapter 11 of the Bankruptcy Code to provide that, in the event a CMP enters a chapter 11 proceeding, the CMP (or its trustee) must make timely payments for the required supplemental coverage. Payments made prior to approval of a reorganization plan would be treated as an administrative expense. The reorganization plan would have to provide for continuation of the payments

to the extent necessary to comply with the assurances made to the Secretary.

(l) Task Force on Medicare Capitation.—Establishes a 15-member Task Force on Medicare Capitation, to be appointed by the Prospective Payment Assessment Commission (ProPAC), in consultation with the Physician Payment Review Commission (PPRC), after consultation with private and prepaid health plans. Membership would consist of 5 members drawn from each of the following groups:

(i) Representatives of private and prepaid health plans; these could include physicians or other health professionals serving Medicare beneficiaries;

(ii) Researchers in health care delivery and financing and experts in prepaid health care financing and underwriting;

(iii) Medicare beneficiaries and representatives of employers and labor.

Members are to serve for the life of the Task Force. A vacancy is to be filled by a member of the appropriate group, appointed in the same manner as the original appointee. Replacement of a member would not affect the powers or duties of the Task Force.

Provides that a majority of the Task Force members shall constitute a quorum and that decisions may be made by a simple majority of members present and voting at a properly called meeting. The first meeting is to be called by ProPAC no later than January 1, 1988. Task Force members are to select a Chairman. Subsequent meetings are to occur at the call of the Chairman or a majority of members, but no less than once every 3 months.

Provides that members are to serve without pay but receive travel expenses and per diem allowances according to the rules for persons serving intermittently in Government service.

Provides that the Task Force shall:

(i) Periodically review the calculations and methodology employed by the Secretary in establishing the capitation rate for an HMO/CMP with a risk contract;

(iii) Document and report on discrepancies between the actual and projected U.S. per capita incurred cost (USPCC) used in rate-setting, with particular attention to calendar years 1985, 1986, and 1987; and

(iii) Assess alternative rate-setting methodologies.

Requires the Task Force to submit a final report to Congress no later than January 1, 1989. The Secretary is required to provide interim reports, no later than January 1, 1989 and 1990, describing the Task Force's activities and giving any preliminary findings on the subjects to be addressed in the final report.

Provides that the Task Force's final report shall include:

(i) An assessment of the long-term potential for Medicare savings through prepared health plans;

(ii) A comparative analysis of use, cost, and quality of services under fee-for-service systems and prepaid plans;

(iii) An evaluation of the geographic areas used in developing capitation rates, the use of fee-for-service reimbursement and utilization rates in calculating rates, and the effect on the rate calculation of substantial market penetration by prepaid plans;

(iv) Recommendations for changes in the Medicare rate-setting methodology for risk contractors, specifically addressing:

Rate adjustments for case mix (including age, disability, and functional status), geographical differences in the cost of furnishing services, and the effect of outlier cases;

Alternative rate methodologies to control and reimburse for catastrophic illness;

Methods for ensuring that individuals in rural or medically underserved areas have access to quality prepaid services; and

Setting a more equitable rate for organizations which serve rural or medically underserved areas, or areas where medical practice is more conservative.

Requires the report to be prepared in consultation with HCFA and to be based in part on findings of research projects conducted by the Task Force or HCFA. The Task Force is required to allow representatives of private and prepaid health plans to comment on the report before its submission; comments are to accompany the final report submitted to Congress.

Provides that the Task Force may award research grants or contracts for assistance in its duties, provided that it demonstrates to the satisfaction of ProPAC and PPRC that the assistance is needed to provide otherwise unavailable information. The Task Force is authorized to appoint staff and establish pay rates without regard to civil service rules. Travel expenses and per diem allowances are subject to the rules for persons serving intermittently in the Government service. The Task Force is authorized to use ProPAC and PPRC staff on a reimbursable basis and with the prior consent of the commission concerned. The Task Force is permitted to use the United States mails on the same terms as other government agencies, to accept donations and volunteer services, to procure supplies, services, and property, and to make contracts. The Task Force is authorized to adopt rules and procedures, including procedures to allow interested parties to submit information.

Provides that the Task Force will terminate on January 2, 1991. Any funds held by the Task Force on that date would be returned to the Treasury and credited as miscellaneous receipts; other property would be disposed of as surplus property.

Authorizes appropriations for FY 1988 through 1991 of such sums as may be necessary to carry out the Task Force provisions.

(m) Disabled Individual Classification.—Requires the Secretary to establish a class of beneficiaries who reach age 65 during calendar 1988, 1989, 1990, or 1991, and who received Social Security disability benefits prior to reaching age 65.

(n) Two-Year Extension on Period for Benefit Stabilization.—Allows a stabilization fund to be established for a contract period beginning up to 6 years after the enactment of the Deficit Reduction Act of 1984, or July 18, 1990.

(o) Notice to enrollees.—Health maintenance organizations would be required to inform beneficiaries of the possibility that the HMO's participation in Medicare will not continue indefinitely.

Effective dates.—(a), (b), (c), (d), (g), (h), (j), (l), and (m) are effective on enactment. (i) Effective April 1, 1988, or earlier if the Secretary can provide the required data in machine readable form prior

to that date. (k) Effective on enactment. Applies to a case under chapter 11 of the Bankruptcy Code for which a plan of reorganization has not been confirmed by the court as of the date of enactment. (n) Effective as if included in the Deficit Reduction Act of 1984.

Conference agreement

(a) Broadening Use of Civil Monetary Penalties and Intermediate Sanctions against HMOs/CMPs.—The conference agreement includes the Senate amendment with a modification to provide for the higher penalty amounts included in the House provision.

(b) Capitation Demonstration Projects.—The conference agreement includes the Senate amendment, with modifications relating to demonstrations of contracts with employer related groups. The Secretary is permitted to conduct no more than three such projects, with combined expenditures to equal no more than $600 million per year, to be distributed among the projects at the Secretary's discretion. The Secretary is authorized to compute payment rates for the projects on the basis of individual average projected cost (APC) for the beneficiaries belonging to the group; rates may not exceed 95 percent of the APC. Rates may not exceed 115 percent of the AAPCC (as would be computed for a comparable arrangement with an HMO or CMP) after the third year of the project, or 95 percent of the AAPCC after the fifth year. The sponsor of the project may retain not more than 5 percent of the APC to the extent that the APC exceeds the costs of the project. At the discretion of the Secretary, additional savings would be returned to beneficiaries in the form of additional benefits or returned; no portion of the excess savings could be used to fund additional benefits for participants who are not Medicare beneficiaries.

Enrollment in the demonstration must be voluntary. Enrollees must have the right to disenroll on 30 days notice and to return to the basic Medicare and supplemental health plan coverage they had prior to enrolling. The projects would be subject to the same requirements as HMOs and CMPs with risk-sharing contracts, relating to payment of claims from outside providers, prior review of brochure and other promotional materials, review of the quality of care by a peer review organization (PRO) or other quality review organization selected by the Secretary, and civil monetary penalties for specified contractural or regulatory violations. Projects would also be required to comply with all applicable State laws.

Benefits under a project must be equal to or greater than the benefits available to enrollees under Medicare and under the employer-sponsored plan currently in effect (or equal to the actuarial equivalent of the Medicare and employer plan combined). The project must quarantee all benefits for the period of the demonstration. The project must demonstrate to the satisfaction of the Secretary that it has adequate financial reserves.

The conference agreement provides that no capitation demonstration, except one involving an eligible organization under the terms of section 1876 of the Act, may be conducted other than under the terms specified above.

The Comptoller General is required to monitor projects conducted under this section and report at least once a year to the Com-

mittee on Finance of the Senate and the Committees on Energy and Commerce and on Ways and Means of the House on the status of the projects and the effect on the projects of the requirements of this section, and to file a final report at the conclusion of the projects.

(c) Treatment of Michigan Blue Care HMO Network under 50 Percent Rule.—The conference agreement includes the Senate amendment.

(d) Assignment of HMO Members for Certain Organizations.—The conference agreement includes the Senate amendment, with an amendment to clarify that only members with a collectively bargained right to obtain services through the organization shall be considered members of the parent organization.

(e) Coverage of Social Worker Services Furnished by an HMO to Its Members.—The conference agreement includes the House provision.

(f) Delay in Effective Date of Physician Incentive Rules for Health Maintenance Organizations.—The conference agreement includes the House provision.

(g) Temporary Waiver for Watts Health Foundation.—The conference agreement includes the Senate amendment. The conferees would continue the current exemption of the Watts Health Foundation's federally qualified HMO (United Health Plan) from the 50–50 rule for Medicare risk contracts until January 1, 1990. The plan has suffered financial problems that resulted in it filing for bankruptcy under Chapter 11 of the United States Code. This further delay in the application of the 50–50 rule will provide the plan with a period in which it can reorganize and renew its efforts to enroll members who are not eligible for Medicare or Medicaid. Beginning on January 1, 1990, the plan will be required to have Secretarial approval of an enrollment schedule that will bring the plan into compliance with 50–50 rule.

(h) Extension of Waivers for Social Health Maintenance Organization.—The conference agreement includes the Senate amendment.

(i) HMO Payments for Hospital Services.—The conference agreement includes the Senate amendment, with modifications. The requirement that hospitals and skilled nursing facilities accept payment at Medicare levels as payment in full for services to risk contract enrollees applies to enrollees of all eligible organizations, rather than just those in organizations which had elected the direct payment option prior to October 1, 1987. The provision is effective for discharges on or after April 1, 1988, or, if later, on the earliest date on which the Secretary can provide the required data in machine readable form.

(j) Discount and Advance Determination of Payments.—The conference agreement does not include the Senate amendment.

(k) Post-Contract Protection for HMO and CMP Enrollees.—The conference agreement includes the Senate amendment, with modifications. The requirement applies to Federally qualified HMOs, as well as to CMPs. The organization is responsible for continued coverage for not more than 6 months after contract termination. The agreement does not include amendments to the Bankrupt Code.

1. Task Force on Medicare Capitation.—The conference agreement includes the Senate amendment, with modifications. The study of Medicare capitation is to be performed by the General Accounting Office, rather than by an independent task force. The study is to address, at a minimum: validation of the current AAPCC computation, methods for refining the AAPCC, alternatives to the use of the AAPCC in rate setting, and other issues, including problems of enrollee self-selection, catastrophic cases, and rates for rural and medically underserved areas.

(m) Disabled Individual Classification.—The conference agreement does not include the Senate amendment.

(n) Two-Year Extension on Period for Benefit Stabilization.—The conference agreement includes the Senate amendment.

(o) Notice to Enrollees.—The conference agreement includes the Senate amendment.

3. Exclusion of Direct Medical Education Costs Attributable to Training of Foreign Medical Graduates (Section 4002(b) of Senate Amendment)

Present law

COBRA requires the Secretary to pay hospitals for direct costs of graduate medical education programs (training of resident physicians) on the basis of a hospital specific, prospectively determined amount per full time equivalent (FTE) resident. The per FTE resident amount is based on the actual allowable cost per FTE resident the hospital incurred in a base year, updated to the year of payment by the rate of increase in the consumer price index. The aggregate payment the hospital receives for a cost reporting period is based on Medicare's share of the product of the hospital's per resident amount for the period multiplied by the weighted number of FTE residents the hospital had in approved medical residency training programs during the period. Medicare's share is equal to the fraction of the hospital's inpatient bed days attributable to Medicare patients.

The weighted number of FTE residents is based on certain weighting factors: residents who are in their initial residency period (years needed to qualify for board certification) are fully counted; residents not in the initial period are counted as one-half an FTE; and, after July 1, 1987, residents who are foreign medical graduates (FMGs) who have not passed a national exam are not counted at all. A foreign medical graduate is defined as a resident who is not a graduate of an accredited U.S. or Canadian school of medicine, osteopathy, dentistry, or podiatry.

House bill

No provision.

Senate amendment

Provides that, except for transition periods, foreign medical graduates (FMGs) shall not be counted in the hospital's number of FTE residents for any cost reporting period beginning on or after July 1, 1988. Under the transition rule for the first cost reporting period beginning on or after July 1, 1988, the number of FMG residents counted is equal to the lesser of: (1) two-thirds of the number of

FMG residents in approved programs during the year who began their initial period of residency training prior to July 1, 1988; or (2) two-thirds of the number of FMG residents for whom the hospital received direct medical education payments in the last cost reporting period beginning prior to July 1, 1988. For the second cost reporting period after July 1, 1988, the count is the lesser of: (1) one-third of the number of FMGs in approved programs during the year who began their initial residency period before July 1, 1988; or (2) one-third of the number of FMGs for whom the hospital received payments for direct medical education costs during the last cost reporting period beginning before July 1, 1987.

Also provides a special five year transition period for hospitals in which more than 50 percent of the residents for whom the hospital receives direct medical education payments, as of September 1, 1987, are FMGs. In this case, the first transition rule applies for the first two cost reporting periods beginning on or after July 1, 1988, and the second transition rule applies for the next three cost reporting periods.

Effective date.—Enactment.

Conference agreement

The conference ageement does not include the Senate amendment.

4. Publication of Policies (Sections 9206(j) and 9233 (b) and (d), and Section 4073 of House bill; Sections 4001(c), 4012(a), and 4081(b) of Senate amendment)

Present law

(a) Requiring Publication of Intermediary and Carrier Budget Methodology.—The Secretary is required to publish in the Federal Register the standards and criteria used to evaluate Medicare fiscal intermediaries and carriers. In paying fiscal intermediaries and carriers for their services, the Secretary is required to take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization.

Current law does not require the Secretary to publish the methodology by which he or she determines this amount.

(b) Notification of Providers of Services of Changes in Medicare Rules.—The Secretary is authorized to enter into agreements with fiscal intermediaries. These agreements require, among other requirements, that the intermediaries serve as a center for, and communicate to providers, any information or instructions furnished to the intermediary by the Secretary.

(c) Publication as Regulations of Significant Policies.—Current law requires that, except in specified circumstances, Medicare regulations must go through proposed rulemaking with a 60-day period for public comment. The law does not define a regulation for that purpose.

(d) Publication of List of Other Policies.—A number of policy matters which are issued by the Department of Health and Human Services of the Health Care Financing Administration are not required to go through public rulemaking.

(e) Advance Notice of Certain Other Policy Changes.—In addition to policies promulgated by the Department of Health and Human Services and the Health Care Financing Administration, policies are sometimes adopted by the fiscal intermediaries, carriers, or peer review organizations.

(f) Rural Impact Regulatory Analysis.—There is currently no requirement that the Secretary include, in a proposed final rule, an analysis of the regulation's impact on rural areas.

(g) No provision

(h) No provision.

(i) No provision.

House bill

(a) Requiring Publication of Intermediary and Carrier Budget Methodology.—

Section 9233(b).—Requires the Secretary to publish in the Federal Register, by September 1 before each fiscal year, the data, standards, and methodology to be used to establish budgets for fiscal intermediaries and carriers for that fiscal year.

The Secretary is first required to publish in the Federal Register for public comment, at least 90 days before, the data, standards, and methodology proposed to be used.

Section 4073.—No provision.

(b) Notification of Changes in Medicare Policy.—

Section 9233(d).—Requires each agreement between the Secretary and a fiscal intermediary to include the requirement that the intermediary transmit to each home health agency and skilled nursing facility, within 5 business days after receipt, a copy of any related coverage or program instructions and memoranda, clarifications, interpretive rules, statements of policy, and guidelines of general applicability which the Secretary has sent the intermediary. For other providers, the intermediary is required to transmit this information by the 7th day of the following month (except that the information must be sent within 5 business days if the statement is effective before the 7th day of the following month).

Section 4073.—No provision.

(c) Publication as Regulations of Significant policies.—

Section 9233.—No provision.

Section 4073.—Provides that no rule, requirement, or other statement of policy (other than a national coverage determination) that has (or may have) a significant effect on the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive Medicare services or benefits shall take effect unless it is promulgated by the Secretary by regulation.

(d) Publication of List of Other Policies.—

Section 9233.—No provision.

Section 4073.—Requires the Secretary to publish in the Federal Register, at least every 3 months, a list of all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability which: (1) are promulgated by the Secretary to carry out the Medicare programs, and (2) are not published as required by (c) above or have not been previously listed as under this subsection.

(e) Advance Notice of Certain Other Policy Changes.—

Section 9233.—No provision.

Section 4073.—Provides that a carrier, fiscal intermediary, or peer review organization may not change a policy which changes (or established a standard for) Medicare payment (including the establishment of payment screens and utilization and quality control standards), unless it: (1) has a process reasonably designed to provide notice of the change to providers, practitioners likely to be affected by the change; and (2) provides notice under such a process not later than 30 days before the effective date of the change.

(f) Rural Impact Regulatory Analysis.—

Section 9206(j).—Requires the Secretary—in publishing notices of proposed and final regulations relating to Part A of Medicare—to include an analysis of the impact of such regulations on health care in rural hospitals.

Section 4073.—Requires the Secretary—in each proposed or final regulation meeting certain requirements to include an analysis of the impact of the regulation on the access of individuals to health care services in rural areas. The regulations for which this requirement applies are those that: (1) related to a Federal health care program under the jurisdiction of the Secretary; and (2) can reasonably be expected to affect a substantial number of providers of health care services in rural areas. The impact analysis is required to include an evaluation of the ability of rural health care providers to comply with any reporting requirements imposed by the regulation.

(g) Consistent and Clearly Understood Practices.—No. provision.

(h) Easily Accessible Data Base.—No provision.

(i) Report.—No provision.

Effective date.—

Section 9233(b) and (d).—(a) Applies on or after the date of enactment of this Act and applies to budgets for fiscal years beginning with fiscal year 1989. (b) Applies to any fiscal intermediary agreements as of January 1, 1988, but shall not apply to any instruction, memorandum, clarification, rule, statement, or guideline issued before that date.

Section 9206(j).—(f) Applies to regulations (and proposed regulations) issued on or after January 1, 1988.

Section 4073.—(c) Applies on or after the date of enactment of this Act, but does not apply to rules, requirements, and policies issued on or before the date of enactment of this Act. (d) Applies on or after the date of enactment of this Act, but does not apply to instructions, rules, statements, and guideline issued before January 1, 1988. The Secretary is required to first publish the required list in the Federal Register by April 1, 1988. (e) Applies to policy changes issued on or after January 1, 1988. (f)—Applies to regulations published more than 120 days after the date of enactment of this Act.

Senate amendment

(a) Requiring Publication of Intermediary and Carrier Budget Methodology.—Similar provision except that it does not contain the requirement that the Secretary, 90 days in advance, publish the data, standards, and methodologies proposed to be used.

(b) Notification of Changes in Medicare Policy.—Requires each fiscal intermediary and carrier which administers Medicare claims for extended care, post-hospital extended care, home health care, and durable medical equipment benefits to make available to the public all interpretive materials, guidelines, and clarifications of policies which relate to payments for such benefits.

(c) Publications as Regulations of Significant Policies.—No provision. [See (d) below.]

(d) Publication of List or Other Policies.—Requires the Secretary to publish in the Federal Register, not less than every three months, a list indicating the subject matter of all new home health care, extended care, post-hospital extended care, and durable medical equipment coverage instructions and clarifications that have been furnished in the preceding 3 months to fiscal intermediaries, carriers, or service providers, as well as interpretive rules, and statements of policy or policy changes, issued or used by the Secretary, and by fiscal intermediaries or carriers.

(e) Advance Notice of Certain Other Policy Changes.—Requires the Secretary to only change policies or establish standards for Medicare payment, and requires the Secretary or his or her fiscal intermediaries or carriers to only issue additional instructions, clarifications, rules, statements, and guidelines for extended care, post-hospital extended care, home health care, or durable medical equipment by written statement, made available to all affected fiscal intermediaries, carriers, and service providers (and to the Secretary when such additional statement is made by a fiscal intermediary or carrier).

Provides that any such statement shall only have effect with respect to claims submitted 30 days after its full text has been made available pursuant to (d) above.

(f) Rural Impact Regulatory Analysis.—Requires the Secretary—whenever he or she publishes a general notice of *proposed* rulemaking for any rule or regulation proposed under Medicare, Medicaid, or the peer review organization program, that may have a significant impact on substantial number of small rural hospitals—to prepare and make available for public comment an initial regulatory impact analysis.

Requires that analysis to describe the impact of the proposed rule or regulation on such hospitals and is required to set forth, with respect to small rural hospitals, the matters required under Section 603 of Title V, United States Code—to be set forth with respect to small entities.

Requires the initial regulatory impact analysis (or a summary) to be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

Requires the Secretary—whenever he or she promulgates a *final* version of a rule or regulation for which an initial regulatory impact analysis is required by the above—to prepare a final regulatory impact analysis with respect to the final version of the rule or regulation.

Requires that analysis to describe the impact of the proposed rule or regulation on such hospitals and is required to set forth, with respect to small rural hospitals, the matters required under

Section 603 of Title V, United States Code—to be set forth with respect to small entities.

Requires the Secretary to make copies of the final regulatory impact analysis available to the public and to publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

Requires—if a regulatory flexibility analysis is required by Chapter 6 or Title V, United States Code, for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.

(g) Consistent and Clearly Understood Practices.—Requires the Secretary to ensure that the practices of fiscal intermediaries and carriers regarding Medicare payments are consistent with each other and, to the maximum extent possible, are clearly understood by service providers and beneficiaries.

Requires the Secretary to consult periodically with representatives of beneficiaries, service providers, fiscal intermediaries and carriers, [and] to update, and clarify, as necessary, existing policies regarding skilled nursing and home health care to meet such goals.

(h) Easily Accessible Data Base.—Requires the Secretary, to the extent feasible, to make such changes in automated data collection and retrieval by the Secretary and his or her fiscal intermediaries as are necessary to make easily accessible for the Secretary and other appropriate parties a data base which fairly and accurately reflects the provision of extended care, post-hospital extended care, and home health care Medicare benefits, including such categories as benefit denials, results of appeals, and other relevant factors, and selectable by such categories and by fiscal intermediary, service provider, and region.

(i) Report.—Requires the Secretary, not later than six months after enactment, to report to Congress on the feasibility of including in the data base required by (h) above, diagnoses (or groups of them), length of coverage, and reimbursements.

Effective date.—(a) Applies on or after the date of enactment of this Act and applies to budget for fiscal years beginning with fiscal year 1989. (b) and (d) Applies June 1, 1988. (e), (g), (h), and (i) Enactment. (f) Applies to regulations proposed more than 30 days after the date of the enactment of this Act.

Conference agreement

(a) Requiring Publication of Intermediary and Carrier Budget Methodology.—The conference agreement includes the House provision.

(b) Notification of Providers of Services of Changes in Medicare Policy.—The conference agreement includes the Senate amendment, with a modification. The intermediaries and carriers are to transmit information to providers within 30 days.

(c) Publication as Regulations of Significant Policies.—The conference agreement includes the House Provision, with an amendment to clarify that only policies establishing or changing a substantive legal standard governing benefits, payment, or eligibility must be promulgated as regulations. The conferees note that this language reflects recent court rulings.

(d) Publication of List of Other Policies.—The conference agreement includes the House provision.

(e) Advance Notice of Certain Other Policy Changes.—The conference agreement does not include either the House provision or the Senate amendment.

(f) Rural Impact Regulatory Analysis.—The conference agreement includes the Senate amendment.

(g) Consistent and Clearly Understood Practices.—The conference agreement does not include the Senate amendment.

(h) Easily Accessible Data Base.—The conference agreement includes the Senate amendment.

(i) Report.—The conference agreement includes the Senate amendment.

5. Permitting Continuation of Medicare Coverage by Payment by Individuals With Physical or Mental Impairments and Permitting Disabled To Renew Entitlement Without Waiting Period (Section 4024 of the House bill; Section 4091 of Senate amendment)

Present law

(a) Continual Hospital Insurance Benefits for Uninsured Individuals with Certain Physical or Mental Impairments.—An individual whose monthly Disability Insurance (DI) benefits cease because he or she is engaging in substantial gainful activity is entitled to HI benefits for three additional years (including 12 months worth of extended "trial work" during which DI entitlement technically continues while monthly benefits are suspended), provided the individual has not medically recovered from the impairment that established the initial entitlement to benefits.

OBRA provides that Medicare is the secondary payer for disabled Medicare beneficiaries who elect to be covered under employment-based health insurance as a current employee (or family member of such employee) of a large employer (at least 100 employees). The provision is effective 1987–1992.

(b) None.

(c) None.

(d) Buy-in to Part B Coverage.—An individual whose Disability Insurance (DI) benefits cease because he or she is engaging in substantial gainful activity is entitled to SMI benefits for three additional years, including 12 months' worth of extended "trial work" during which DI entitlement technically continues while benefits are suspended, provided the individual has not medically recovered from the impairment that established the initial entitlement to benefits.

(e) Permitting Disabled Individuals to Renew Entitlement to Medicare After Gainful Employment Without a 2-Year Waiting Period.—Individuals whose DI entitlement has been terminated must meet a two-year waiting period requirement before Medicare coverage can commence if they return to the DI rolls after 5 years (7 years in the case disabled widows and widowers and people disabled since childhood.)

House bill

(a) Continued Hospital Insurance Benefits for Uninsured Individuals With Certain Physical or Mental Impairments.—Permits a

former DI recipient, not yet age 65, who has been continuously entitled to or enrolled in HI or in a group health plan provided by the individual's employer or spouse's employer but whose entitlement to HI is about to end because of his or her engagement in substantial gainful activity, to enroll in HI if the individual's impairment continues (as re-determined annually).

Specifies that individual has no initial 7-month enrollment period beginning three months before his or her HI coverage ends.

Specifies that if the individual's enrollment or non-enrollment is unintentional, inadvertent, or erroneous and is the result of error, misrepresentation, or inaction by the Government or its instrumentalities, the Secretary may take the necessary steps to correct the situation.

Specifies that if an individual is in a group health plan (as required to be offered by an employer under conditions prescribed in Title 18 of the Act) at the time he or she is first eligible to elect enrollment for continued HI coverage, a subsequent special enrollment period can be established encompassing the 7-month period beginning with the month after the group health insurance ends. This special enrollment provision also applies to people who elect and subsequently cancel the continuation of their HI coverage provided they maintain coverage under such an employer group health plan (in effect, allowing an individual potentially to have more than one special enrollment period).

(b) Periods of New HI Coverage.—(1) Specifies periods of new HI coverage for individuals who elect continued HI coverage during their initial enrollment period, as follows—

(1) if the date of enrollment occurs before their existing HI coverage runs out, the new coverage begins in the month after the existing coverage begins in the month after the existing coverage ends;

(2) if the date of enrollment is delayed until the first month after their existing HI coverage runs out, the new coverage begins 2 months later; or

(3) if the date of enrollment is delayed until the second or later month after their existing HI coverage runs out, the new coverage begins 3 months later.

(2) Specifies periods of new HI coverage for individuals who elect continued HI coverage during a subsequent special enrollment period (as a result of having been in an employer group health plan), as follows—

(1) if the date of enrollment occurs in the month after the employer's coverage runs out, the new HI coverage would begin in that month; or

(2) if the date of enrollment occurs in a later month, the new HI coverage would begin in the month following the month of enrollment.

The new coverage would end:

(1) in the month that the individual files notice that he no longer wishes HI coverage;

(2) at the end of the grace period for nonpayment of premiums; or

(3) in the last month that the individual meets the eligibility criteria for HI coverage.

No payment would be made for expresses that were incurred outside of the coverage period.

(c) Premium.—Requires individuals to pay a monthly premium for the new HI coverage at the actuarial rate paid by aged recipients. When combined with a new SMI premium (described in (d) below), the two monthly premiums together may not exceed 8 percent of 1/12th of the individual's annual gross income. However, in no case could either premium fall below 25 percent of the full premium that would otherwise be required.

Specifies that the premiums may be paid on behalf of an individual by any public or private entity under contract or other arrangement with the Secretary.

Specifies that the HI premium is to be deposited in the Treasury and credited to the HI Trust Fund.

(d) Buy-in to Part B Coverage.—Permits an individual whose SMI coverage is about to run out to enroll for continuation of such coverage in the same manner and under the same enrollment period requirements as are created for HI in the previous subsection.

Specifies that the individual is required to pay a monthly premium for the new SMI coverage at twice the actuarial rate for the aged (i.e. about four times the regular SMI premium), subject to the minimum and maximum limitations for the combined HI and SMI premiums described in (c) above.

(e) Permitting Disabled Individuals to Renew Entitlement to Medicare After Gainful Employment Without a 2-Year Waiting Period.—Permits individuals who reestablish entitlement to DI benefits after being off the rolls for 5 years (7 years in the case of disabled widows and widowers and people disabled since childhood) to be covered by the Medicare program without again having to meet the 2-year waiting period requirement. Persons may count months of a previous period of disability toward satisfying the 2-year waiting period, provided their current impairment is the same as (or directly related to) that in the previous period of disability.

Effective dates.—In general, the section would become effective for months beginning after the 60-day period beginning on the date of enactment. (a) and (b), (c) and (d) apply to individuals whose entitlement under HI would otherwise terminate after the 60-day period (e) applies when the previous period of disability ends later than 60 days after enactment.

Senate amendment

(a) Continued Hospital Insurance Benefits for Uninsured Individuals with Certain Physical or Mental Impairments.—No provision.

(b) Periods of New HI Converage.—No provision.

(c) Premium.—No provision

(d) Buy-in to Part B Coverage.—No provision.

(e) Permitting Disabled Individuals to Renew Entitlement to Medicare After Gainful Employment Without a 2-year Waiting Period.—Same as House bill.

Effective dates.—(e) applies when the previous period of disability ends later than 60 days after enactment.

Conference agreement

(a) Continued Hospital Insurance benefits for uninsured individuals with certain physical or mental impairments.—The conference agreement does not include the House provision.

(b) Periods of new HI coverage.—The conference agreement does not include the House provision.

(c) Premium.—The conference agreement does not include the House provision.

(d) Buy-in to Part B coverage.—The conference agreement does not include the House provision.

(e) Permitting disabled individuals to renew entitlement to Medicare without a 2-year waiting period.—The conference agreement includes the Senate amendment.

6. Direct Payment for Services of Registered Nurses as Assistants at Surgery (Section 4013 of House bill)

Present law

OBRA provided for direct payment for the services of physician assistants, subject to various terms, conditions and limitations on payment amounts. Among the services for which physician assistants may be reimbursed are those performed as assistants at surgery.

House bill

Provides that registered nurses may be directly reimbursed for their services as assistants at surgery under the same terms, conditions and limitations on payment amounts that apply for physician assistants. The Secretary is required to adjust payments made to hospitals to eliminate any duplicate payments that would otherwise be made as a result of this provision. The Secretary is required to report to Congress no later than April 1, 1989 concerning adjustments to payments made to physician assistants and registered nurses to assure that such payments reflect the cost of furnishing the services.

Effective date.—Applies to services rendered on or after January 1, 1988.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

7. Home Health Care Quality Improvements (Section 4031–4040 of House bill; Section 4081 (a), (c)–(j) of Senate amendment)

Present law

(a) Requirement That Individual Be Confined to Home.—To qualify for home health services, a Medicare beneficiary must be confined to his or her home under the care of a physician. In addition, the person must be in need of intermittent skilled nursing care, or physical or speech therapy. Medicare statute does not specify the criteria for meeting the "homebound" requirement. These criteria

are contained in Health Care Financing Administration program guidelines.

(b) Appeals Procedures.—(1) Fiscal intermediaries review providers claims for payments for care provided to Medicare beneficiaries and make decisions as to whether the care provided is covered care and should be paid for by Medicare. Medicare law does not require that fiscal intermediaries describe, demonstrate, or otherwise explain the reasons for denying payment for care. Nor does Medicare law require that intermediates take action on a beneficiary's appeal of a denial decision within a specified period of time.

(2) Medicare law requires the Secretary to develop standards, criteria, and procedures to evaluate a fiscal intermediary's performance of claims processing and other related functions.

Effective date.—(1) For provisions requiring the intermediary to provide a thorough explanation of a denial and to respond promptly to a reconsideration of a determination, applies to claims filed on or after Oct. 1, 1987.

(2) For provisions requiring the Secretary to use standards and criteria indicating promptness and accuracy of fiscal intermediary determinations, applies to performance of intermediaries with respect to claims filed on or after Oct. 1, 1987.

(3) Requires the Secretary to provide for such timely amendments to agreements with fiscal intermediaries and regulations to such extent as may be necessary to implement the amendments of these provisions on a timely basis.

(c) Conditions of Participation for Home Health Agencies —Establishes in Medicare statute conditions of participation for home health agencies as follows:

(1) The agency must protect and promote the rights of each individual under its care, including each of the following rights:

(a) The right to be fully informed in advance about the care and treatment to be provided by the agency; about any changes in the care or treatment to be provided; and except for an individual judged incompetent, to participate in planning care and treatment or changes in care or treatment.

(b) The right to voice grievances without discrimination or reprisal with respect to treatment or care that is or fails to be furnished.

(c) The right to confidentiality of clinical records.

(d) The right to have one's property treated with respect.

(e) The right to be fully informed orally and in writing in advance of coming under the care of the agency of items and services for which payment may be made by Medicare; coverage of items and services under Medicare, Medicaid, and any other Federal programs; any charges not covered under Medicare and any charges the individual may have to pay; and any changes in charges or items and services furnished.

(f) The right to be fully informed in writing in advance of coming under the care of the agency of the individual's rights and obligations under Medicare.

(g) The right to be informed of the availability of the State home health agency hot-line established under the bill.

(2) The agency must notify the State entity responsible for the licensing or certification of the home health agency of a change in (a) the persons with an ownership or control interest in the agency, and (b) the corporation, association, or other company responsible for the management of the agency. This notice must be given at the time of the change and must include the identity of each new person or company.

(3) The agency must not use on a fulltime, temporary, per diem, or other basis any individual who is not a licensed health care professional to provide covered home health services or items on or after Oct. 1, 1989, unless the individual (1) is competent to provide services as a result of completing a training program that meets minimum standards established by the Secretary, or (2) is enrolled in, and making timely Progress in completing a training program, and with respect to providing specific services, is competent to provide those services. The agency must also provide regular performance review and regular in-service education that assures individuals are competent to provide services. An individual would not be considered to have completed a training program if, since the individual's most recent completion of a program, there has been a continous period of 24 consecutive months during none of which the individual was used to provide services for compensation.

The Secretary would be required to establish minimum standards for training programs by not later than July 1, 1988. These standards would be required to include the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determining competency. These standards could permit recognition of programs offered by or in home health agencies, as well as other organizations (including employee organizations), and of programs in effect on the date of enactment of the bill. However, the standards could not provide for the recognition and approval of a program offered by or in a home health agency which has been determined to be out of compliance with the requirements and conditions of participation for home health agencies within the previous 2 years. Standards would be required to permit that an individual who has completed a training program before Jan. 1, 1989, be deemed to have completed a program approved by the Secretary, if the Secretary determines that at the time the program was offered, the program met the standards established as a result of this legislation.

(4) The agency must include an individual's plan of care in the person's clinical records.

(5) The agency must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including requirements of the Social Security Act pertaining to disclosure of ownership information) and with all accepted professional standards and principles which apply to professionals providing home health services.

Provides that it is the duty and responsibility of the Secretary to assure that the conditions of participation and requirements for home health agencies and their enforcement are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient operation of the program.

Effective date.—Except as otherwise provided above, applies to home health agencies as of the first day of the 18th calendar month that begins after the date of enactment.

(d) Standard and Extended Survey.—(1) General Requirements for Standard Surveys.—Requires that the agreement the Secretary enters into with State or local agencies for surveying home health agencies provides that the agency conduct an annual standard survey of each home health agency. Provides that any individual who notifies, or causes to be notified, a home health agency of the time or date of this survey be subject to a civil money penalty of an amount not to exceed $2,000. Requires the Secretary to provide for imposition of the civil money penalties in a manner similar to that under current Social Security law. Requires the Secretary to review each State's procedures for scheduling and conduct of annual standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of a standard survey.

(2) Frequency of Standard Surveys.—Requires that standard surveys of home health agencies be conducted without prior notice not later than 15 months after the date of the previous standard survey. Requires that the Statewide average interval between standard surveys of home health agencies not exceed 12 months. Provides that a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, or management of the agency. Requires that a standard survey be conducted with 2 months of when a significant number of complaints have been reported about a home health agency to the Secretary, the State, the licensing agency in the State, the State or local agency responsible for maintaining a toll-free hotline and investigative unit, or any other appropriate Federal, State, or local agency.

(3) Contents of Standard Survey.—Requires that the standard survey include, for a case-mix stratified sample of individuals provided services by the home health agency, visits to the homes of persons provided care, but only with the consent of such persons. Specifies that visits to the homes be for the purpose of evaluating the extent to which the quality and scope of services furnished by the agency attained and maintained the highest possible functional capacity of the individual, as reflected in the individual's written plan of care and clinical records (in accordance with a standardized reproducible assessment instrument approved by the Secretary). Also requires that the standard survey be based on a protocol that is developed, tested, and validated by the Secretary not later than Oct. 1, 1989.

(4) Conduct of Standard Survey.—Requires that the survey be conducted by an individual who meets minimum qualifications established by the Secretary not later than July 1, 1989 and who is not serving (or has not served within the previous 2 years) as a

member of the staff or as a consultant to the home health agency surveyed.

(5) Extended Survey.—Requires that each home health agency found under a standard survey to have provided substandard care be subject to an extended survey to identify policies and procedures which produced such care and to determine whether the agency has complied with the conditions of participation. Requires that the extended survey be conducted immediately after the standard survey, or, if not practical, not later than 2 weeks after the date of completion of the standard survey. Also provides that any other agency may, at the discretion of the Secretary or State, be subject to an extended or partial extended survey. Further specifies that this provision does not require an extended or partial extended survey as a prerequisite to imposing a sanction against an agency as the result of a finding of a standard survey.

(6) Assessment Instruments for Surveys.—Requires the Secretary to designate an assessment instrument or instruments not later than April 1, 1989, for use in conducting surveys. Requires the Secretary, not later than Jan. 1, 1991, to evaluate the assessment process, report to Congress on the results of the evaluation, and to make, based on the evaluation, modifications in the assessment process as appropriate. Requires the Secretary to periodically update this evaluation, report to Congress on the update, and to make additional modifications as appropriate. Further requires the Secretary to provide training of State and Federal surveyors in the use of the assessment "instrument" or instruments.

Effective date.—Except as otherwise provided, effective on the first day of the 18th calendar month to begin after the date of enactment.

(e) Enforcement.—(1) General Procedures.—Provides that if the Secretary finds that a home health agency is no longer in compliance with certification requirements and determines that the deficiencies involved immediately jeopardize the health and safety of individuals receiving care from the agency, then the Secretary must take immediate action to remove the jeopardy and correct the deficiencies by providing for temporary management or by terminating certification of the agency, and may also provide for other intermediate sanctions described below. Provides that if the deficiencies do not immediately jeopardize health and safety, the Secretary may impose for a period of not to exceed 6 months intermediate sanctions described below, in lieu of termination. Requires the Secretary to terminate certification of such an agency if, after this period of intermediate sanctions, the agency is still no longer in compliance. Also provides that if the Secretary finds that a home health agency is in compliance with the conditions of participation but, as of a previous period, did not meet the requirements, the Secretary may provide for a civil money penalty for the days the agency was not in compliance.

Provides that the Secretary may continue to make payments to home health agencies not in compliance for a period not longer than 6 months, if (1) the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance than to terminate certification; (2) the agency has submitted a plan and timetable for corrective action to the Secretary and the Secre-

tary approves the plan; and (3) the agency agrees to repay Federal payments if the corrective action is not taken in accordance with the approved plan and timetable. Requires the Secretary to establish guidelines for approval of corrective actions.

(2) Intermediate Sanctions.—Requires the Secretary to develop and implement, by not later than April 1, 1989, a range of intermediate sanctions to apply to home health agencies and appropriate procedures for appealing determinations to impose such sanction. Requires that intermediate sanctions developed by the Secretary include: (1) civil money penalties (with interest) for each day of noncompliance; (2) suspension of all or part of the payments that a home health agency would otherwise be entitled to on or after the date the Secretary determines that intermediate sanctions should be imposed; and (3) the appointment of temporary management to oversee the operation of the home health agency to protect and assure the health and safety of individuals under the care of the agency while improvements are made to bring the agency into compliance. Prohibits the termination of temporary management until the Secretary has determined that the agency has the management capability to ensure continued compliance with requirements and conditions of participation.

Specifies that these intermediate sanctions are in addition to sanctions otherwise available under State of Federal law and should not be construed as limiting other remedies, including any remedy available to an individual under common law. Further provides that a finding to suspend payment shall terminate when the Secretary finds that the home health agency is in substantial compliance with all the requirements and conditions of participation.

Requires the Secretary to develop and implement, by not later than April 1, 1989, specific procedures under which each of the intermediate sanctions is to be applied, including the amount of any fines and the severity of each of the sanctions. Requires that the procedures be designed to minimize the time between identification of deficiencies and imposition of sanctions and provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

Effective date.—Except as otherwise provided, effective on the first day of the 18th calendar month after the date of enactment.

(f) Publication of Directory of Home Health Agencies.—Requires the Secretary to publish annually a directory containing the name, address, and telephone number of each home health agency certified to participate in Medicare. Requires the directory to provide information regarding all surveys and certifications of agencies, including information on patient care and the imposition of sanctions, if any. Requires the director to be organized by geographic area and in such a manner as to be most useful to Medicare beneficiaries. Further requires the Secretary to make the directory available to the public without charge at each district and branch office of the Social Security Administration and through area agencies on aging designated under the Older Americans Act. Requires the Secretary to promptly notify beneficiaries of the availability of any directory newly published as a result of this provision.

Effective date.—Enactment.

(g) Maintenance of Toll-Free Hotline and Investigative Unit.—Provides that the Secretary's agreement with a State or local survey agency require that agency to maintain a toll-free hotline to receive complaints and to answer questions about home health agencies in the State or locality.

Also requries the survey agency to maintain a unit for investigating complaints. Requires this unit to possess enforcement authority and to have access to survey reports.

Effective date.—Applies to agreements entered into or renewed on or after the date of enactment.

(h) Study of Adjustments to Home Health Agency Cost Limits.—Requires the Secretary to study and report to Congress, not later than Dec. 31, 1988, on (1) whether the separate schedules of cost limits currently applied to home health agencies located in urban and rural areas accurately reflect differences in costs of urban and rural home health agencies, and (2) the appropriateness of modifying such limits to take into account the proportion of agency patients who are from urban and rural areas.

Effective date.—Enactment.

(i) Data Used to Determine Home Health Agency Cost Limits.—Requires the Secretary to utilize for home health care agency cost limits a wage index that is based on data obtained from home health agencies. Also requires the Secretary to base limits on the most recent data available, which may be for cost reporting periods beginning no earlier than July 1, 1985.

Effective date.—Applies to cost reporting period beginning on or after July 1, 1988.

(j) Home Health Prospective Payment Demonstration Project.—Requires the Secretary to provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the Medicare and Medicaid programs. Requires the project to be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to and quality of home health care, and home health agency operations. Requires that the Secretary assure that services are first furnished under the project not later than July 1, 1988, and, for this purpose, authorizes the Secretary to reinstate a previously awarded contract, or to award a sole source contract to carry out the project. Requires the Secretary to submit to Congress, not later than one year after the date of enactment, an interim report on the demonstration project and, not later than 4 years after enactment, a final report on the results of the project.

Effective date.—Enactment.

(k) Moratorium on Prior Authorization for Home Health and Post-Hospital Extended Care Services.—No provision.

(l) Fiscal Intermediary Consultation Requirement.—No provision.

(m) Delay in Publishing Regulations with Respect to Deeming the Status of Home Health Agencies.—No provision.

(n) Beneficiary Notification.—No provision.

Senate amendment

(a) Requirement that Individual Be Confined to Home.—No provision. Related provision in S. 1127, the Medicare Catastrophic Loss Prevention Act of 1987.

(b) Appeals Procedures.—(1) Provides that the Secretary's agreement with a fiscal intermediary require the intermediary, for denied claims for home health services, extended care services, or post-hospital extended care services, to (a) furnish the provider and the beneficiary with a written explanation of the denial and of the statutory or regulatory basis for the denial; (b) for claims denied on the ground that the service is not medically necessary, ensure that if the beneficiary (or the provider on behalf of the beneficiary) seeks reconsideration of the denial, that the denial is reviewed by a physician (a physician with expertise in geriatrics, if available); and (c) promptly notify the beneficiary and the provider of the disposition of the reconsideration.

(2) Requires the Secretary, in evaluating the performance of fiscal intermediaries and carriers, to include in standards and criteria for home health, extended care, post-hospital extended care, and durable medical equipment claims processing, whether the intermediary is able to process 75 percent of reconsiderations within 60 days (except in the case of FY 1989, 66 percent of reconsiderations), and 90 percent of reconsiderations within 90 days, and the extent to which its determinations are reversed on appeal.

Effective date.—(1) For provisions requiring intermediary to explain denials, to use a physician to review a reconsideration, and to notify promptly, beneficiaries and providers of the disposition of a reconsideration, applies to claims received on or after Jan. 1, 1988.

(3) Similar provision, but also applies to contracts with carriers.

(c) Conditions of Participation for Home Health Agencies.—Establishes in Medicare statute similar conditions of participation for home health agencies.

(1) The agency must protect and promote the rights or each individual under its care, including each of the following rights:

(a) The right to be fully informned about care and treatment, to participate (where appropriate) in planning care and treatment, and to be fully informed in advance of any changes in care or treatment that may affect the individual's well-being.

(b) The right to voice grievances without suffering discrimination or reprisal with respect to treatment or care that is or fails to be furnished.

(c) No provision.

(d) Identical provision.

(e) Similar provision.

(f) No provision.

(g) No provision.

(2) The agency must promptly inform the State entity responsible for the licensing of the home health agency of a change in the persons with an ownership or control interest in the agency. The agency must also promptly provide the State licensing agency the name and social security account number of any individual hired by the agency to provide care and disclose whether such individual has ever been convicted of a felony.

(3) The agency must provide covered home health services (except for medical supplies and durable medical equipment) on or after Oct. 1, 1989, only through persons who are licensed health professionals or who have successfuly completed or are enrolled in and making timely progress in completing a training program that meets minimum standards established by the Secretary. Requires that the Secretary ensure that durable medical equipment suppliers are properly trained in the demonstration and use of the equipment that they supply to home health agencies.

The Secretary would be required to establish minimum standards for training programs by not later than July 1, 1988.

(4) The clinical records of an individual must include the person's plan of care.

(5) The agency must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations and with all accepted professional standards and principles.

Similar provision, but without specification of (1) "duty" of Secretary and (2) "enforcement" of conditions of participation and requirements.

Effective date.—Execept as otherwise provided above, applies to home health agencies as of the first day of the 18th calendar month that begins after the date of enactment.

(d) Standard and Extended Survey.—General Requirements for Standard Surveys.—Requires that the agreement the Secretary enters into with State or local agencies for surveying home health agencies provides that the agency conduct a standard survey of each home health agency. Provides that a standard survey may be made with or without advance notice.

(2) Frequency of Standard Surveys.—Provides that standard surveys may be conducted with or without advance notice. Requires that such surveys be conducted not earlier than 9 months and not later than 15 months after the date of the most recently completed survey. Requires that a standard survey be conducted promptly upon a change of ownership of the agency or a significant number of complaints.

(3) Contents of Standard Survey.—Requires that the standard survey, not later than Jan. 1, 1990, include visits to a sample of the homes of persons provided care, but only with the consent of such persons. Specifies that visits to the home be for the purpose of evaluating the extent to which the quality and scope of services furnished by the agency improved or maintained the functional capacity of the individual (in accordance with a standardized reproducible assessment approved by the Secretary). Requires that the standard survey evaluate the quality of care and services provided and the agency's observance of the individual's rights. Also requires that the standard survey be based on a protocol that is developed, tested, and, validated by the Secretary not later than July 1, 1989.

(4) Conduct of Standard Survey.—Similar provision, except specifies that survey be conducted by an individual who has not, during the two-year period prior to the survey, served as a consultant to the home health agency surveyed with respect to their compliance with conditions of participation.

(5) Extended Survey.—Requires that each home health agency found under a standard survey to have performed poorly with

regard to compliance with any condition of participation be subject to an extended survey. Also provides that any other agency may, at the discretion of the Secretary of State, be subject to an extended survey.

(6) Assessment Instruments for Surveys.—Requires the Secretary to designate an assessment instrument or instruments not later than April 1, 1990. Identical provisions for Secretary's evaluation of assessment process, but with deadline of Jan. 1, 1992. Similar provisions for requiring Secretary to provide training of State and Federal surveyors, but without specification of training in assessment "instruments."

Effective date.—Except as otherwise provided, effective on the first day of the 18th calendar month to begin after the date of enactment.

(e) Enforcement.—(1) General Procedures.—No provisions regarding procedures to be followed when deficiencies immediately jeopardize the health and safety of individuals receiving care from an agency found to be out of compliance with certification requirements. Provides that if the Secretary finds that a home health agency no longer substantially meets the certification requirements, or, has failed to correct a deficiency according to a timetable approved by the Secretary, and furthermore determines that the deficiencies involved do not immediately jeopardize the health and safety of individuals receiving care from the agency, then the Secretary may impose for a period not to exceed one year intermediate sanctions described below, in lieu of termination.

Also requires the Secretary to develop and implement criteria and procedures for the evaluation of plans of correction submitted by home health agencies that do not meet conditions of participation and requirements. Requires that criteria and procedures be designed to maximize specificity in these plans and assure that corrections are made according to a timetable approved by the Secretary.

(2) Intermediate Sanctions.—Similar requirements for the development and implementation of intermediate sanctions, but without specification of deadline. Requires that intermediate sanctions developed by the Secretary include: (1) civil fines and penalties, and (2) suspension of all or part of the payments that a home health agency would otherwise be entitled to on or after the date the Secretary determines that intermediate sanctions should be imposed.

Specifies that these intermediate sanctions are in addition to sanctions otherwise available under State or Federal law.

Similar provision, but without specification of deadline.

Effective date.—Identical provision.

(f) Publication of Directory of Home Health Agencies.—No provision.

(g) Maintenance of Toll-Free Hotline and Investigative Unit.—Similar provision, but specifies that hotline would (1) collect, maintain, and continually update information on home health agencies in the State or localities certified to participate in Medicare (with such information required to include any significant deficiencies found with respect to patient care in the most recent certification survey conducted, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions,

if any, imposed); and (2) receive complaints and answer questions about home health agencies in the State or locality.

Similar provisions also for investigative unit, but specifies that this unit possess enforcement authority and have access to consumer medical records and survey reports.

Effective date.—Applies to agreements entered into or renewed on or after the date of enactment.

(h) Study of Adjustments to Home Health Agency Cost Limits.—Similar provision, except requires Secretary to report not later than June 1, 1988.

Effective date.—Enactment.

(i) Data Used to Determine Home Health Agency Cost Limits.—No provision.

(j) Home Health Prospective Payment Demonstration Project.—Similar provision, but requires the Secretary to conduct a study of and demonstration to test alternative methods of paying home health agencies on a prospective basis for services furnished under Medicare. Also, requires that the study and demonstration provide all necessary data for determining a prospective rate or rates for any such method and for determining whether application of a particular method allows for payment under Medicare on a budget-neutral basis.

Requires that the study account for (1) the special needs of sole community home health agencies and new home health agencies; (2) extraordinary circumstances beyond the control of home health agencies (such as significant fluctuations in population and unusual labor costs); (3) the need to minimize administrative and financial reporting requirements to reduce program costs; (4) variations in severity of illness and case complexity that cannot be adequately accounted for by the various prospective payment methods; and (5) increases in wages and the cost of goods and services included in the cost of providing home health services.

Requires that the amount paid for home health services under the demonstration be no greater than the amount that would have been paid for such services under Medicare, in the absence of the demonstration.

Requires the Secretary to submit to Congress an interim report on the progress of the demonstration not later than 12 months after the date of enactment. Also requires the Secretary, not later than July 1, 1990, to submit to Congress specific legislative proposals based on the results of the study.

Effective date.—Enactment.

(k) Moratorium on Prior Authorization for Home Health and Post-Hospital Extended Care Services.—Prohibits the Secretary from implementing any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under Medicare at any time prior to 6 months after the date the Congress receives the Secretary's report and evaluation of the demonstration required under P.L. 99-509.

Effective date.—Enactment.

(l) Fiscal Intermediary Consultation Requirement.—Provides that the Secretary's agreement with a fiscal intermediary require that the intermediary implement a mechanism for consulting (at least

once annually) with representatives of home health and post-hospital extended care and extended care service providers in the region, beneficiaries of services, and appropriate personnel of the Health Care Financing Administration on problems of claims review, coverage guidelines, reconsiderations, payments, and other activities of the intermediary.

Effective date.—Effective Jan. 1, 1988. Further requires that the Secretary provide for such timely amendments to agreements with intermediaries and regulations to such extent as may be necessary to implement the amendments of this provision on a timely basis.

(m) Delay in Publishing Regulations With Respect to Deeming the Status of Home Health Agencies.—Prohibits the Secretary from publishing, earlier than 6 months after publication of proposed regulations, final regulations providing that an entity may be deemed a home health care agency for purposes of Medicare on the ground that is has been certified by a private accreditation entity.

Effective date.—Enactment.

(n) Beneficiary Notification.—Requires the Secretary, not later than 90 days after enactment of the bill, to develop and distribute to each participating provider and to each fiscal intermediary a standard form that is periodically updated (as appropriate) and contains a description of (1) rights and conditions of coverage of home health, post-hospital extended care, and extended care services furnished under Medicare; (2) rights to appeal a coverage determination where the provider of services decides not to submit a claim on behalf of the beneficiary; (3) the right to appeal (directly or through the provider) the denial of a claim; and (4) the practical steps required for initiating appeals (including sources of legal assistance). Also requires the Secretary to take appropriate steps to ensure that (1) each provider makes the standard document (as updated) available to any individual covered under Part A of Medicare at any time the individual requests home health, post-hospital extended care, or extended care services through the provider; and (2) each intermediary makes the document available to any individual receiving services at any time the intermediary makes a determination regarding home health, post-hospital extended care, or extended care services that the individual may appeal.

Effective date.—Enactment.

Conference agreement

(a) Requirement That Individual Be Confined to Home.—The conference agreement includes the House provision, with an amendment to provide that the limitations on individual's absences from home do not apply to absences for the purpose of medical treatment.

(b) Appeals Procedures.—The conference agreement includes the Senate amendment to apply the same appeals procedures to all claims for home health services under Part B and to all claims for services under Part A, except inpatient hospital services. The conference agreement does not include the requirement for physician reviews of medical reconsiderations. The conferees understand that administrative law judges may or may not base their decisions on criteria beyond those used by fiscal intermediaries. Thus, in setting

the standards under this subsection, the Secretary shall take this understanding into account.

(c) Conditions of Participation for Home Health Agencies.—The conference agreement includes the House provision, with an amendment to provide that DME suppliers must not use on a full-time, temporary, per diem, or other basis any individual who does not meet minimum training standards for the demonstration and use of the equipment that they supply to individuals entitled to Medicare benefits. The Secretary is required to establish the minimum training standards by October 1, 1988. The resident assessment requirement is deferred one year.

(d) Standard and Extended Survey.—The conference agreement includes the House provision, with two amendments. The sample of persons provided care to be visited at home is required to be a case-mix stratified sample to the extent practicable. The deadline for the Secretary's evaluation of the assessment instrument is changed to January 1, 1992.

(e) Enforcement.—The conference agreement includes the House provision.

(f) Publication of Directory of Home Health Agencies.—The conference agreement does not include the House provision.

(g) Maintenance of Toll-Free Hotline and Investigative Unit.—The conference agreement includes the Senate amendment, with a modification to clarify that the investigative unit shall have access to survey and certification records and to consumer medical records but only with the consent of the consumer or his/her legal representatives.

(h) Study of Adjustments to Home and Health Agency Cost Limits.—The conference agreements includes the Senate amendment.

(i) Data Used to Determine Home Health Agency Cost Limits.—The conference agreement includes the House provision, with an amendment to require that only audited wage date obtained from home health agencies be used in the development of the wage index.

(j) Home Health Prospective Payment Demonstration Projects.—The conference agreement includes the House provision.

(k) Moratorium on Prior Authorization for Home Health and Post-Hospital Extended Care Services.—The conference agreement includes the Senate amendment.

(l) Fiscal Intermediary Consultation Requirement.—The conference agreement does not include the Senate amendment.

(m) Delay in Publishing Regulations with Respect to Deeming the Status of Home Health Agencies.—The conference agreement includes the Senate amendment with an amendment to include the deeming of all providers.

(n) Beneficiary Notification.—The conference agreement does not include the Senate amendment.

ESRD Amendments (Sections 4077, 4078, and 4081 of House bill; Section 4013(b) of Senate amendment).

Present law

(a) Implementation of Primary Payer Requirements for ESRD Program.—Medicare law sets forth certain circumstances under which

Medicare payments become secondary to payments from other sources; such as other insurance coverage or workmen's compensation.

Medicare benefits are secondary for a limited period of time (up to 12 consecutive months) in the case of individuals who are entitled to Medicare solely on the basis of end-stage renal disease and who are entitled to coverage under an employer group health plan. During the period in which Medicare is secondary, Medicare pays primary benefits for Medicare-covered services not covered under the employer plan and makes secondary payments to supplement the amount paid by the employer plan if that plan pays only a portion of the charge.

In general, the secondary payer provisions specify that Medicare payment may not be made if payment has been made or can reasonably be expected to be made by the other payer. However, in the case of end-stage renal disease beneficiaries, the standard is whether payment has been made or will be made as promptly as would be made by Medicare.

(b) Limitation of Minimum Utilization Rate Requirement for ESRD Transplantations.—In order to qualify for Medicare payments for covered services to end-stage renal disease patients, providers must meet requirements for a minimum utilization rate for covered procedures and for self-dialysis training programs. Covered services currently include dialysis, dialysis training, and transplantation.

(c) Studies of ESRD Program.—The Secretary is currently required to submit an annual report on the end-stage renal disease program to Congress by July 1 of each year.

House bill

(a) Implementation of Primary Payer Requirements for ESRD Program.—Conforms the payment standard for ESRD payments to that applicable under other secondary payer provisions.

(b) Limitation of Minimum Utilization Rate Requirement for ESRD Transplantations.—Provides that the minimum utilization requirements will only apply to transplantation.

(c) Studies of ESRD Program.—(1) *In General.*—Requires the Secretary to arrange for a study of the end-stage renal disease program.

(2) Items Included in Study.—Requires the study to address, among other items: (A) access to treatment by both Medicare beneficiaries and other patients; (B) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction; (C) the effect of reimbursement on qualify of treatment; (D) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and (E) the adequacy of existing of data systems to monitor these matters on a continuing basis.

(3) Report.—Requires the Secretary to submit to Congress, by 3 years after the date of enactment of this Act, a report on the study.

(4) Arrangements for the Study.—Requires the Secretary to request the National Academy of Sciences, acting through the Insti-

tute of Medicine, to submit an application to conduct the required study. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(5) Elimination of Unneeded Reporting Requirements.—Eliminates the current requirement that the Secretary may submit an annual report on the end-stage renal disease program to Congress by July 1 of each year.

Effective date.—(a) Applies with respect to items and services furnished on or after 30 days after the date of enactment. (b) and (c) Enactment.

Senate amendment

(a) Implementation of Primary Payer Requirements for ESRD Program.—Similar provision.

(b) Limitation of Minimum Utilization Rate Requirement for ESRD Transplantations.—No provision.

(c) Studies of ESRD Program.—No provision.

Effective date.—(a) Enactment.

Conference agreement

(a) Implementation of Primary Payer Requirements for ESRD Program.—The conference agreement includes the House provision.

(b) Limitation of Minimum Utilization Rate Requirement for ESRD Transplantations.—The conference agreement includes the House provision with a modification to extend to July 1, 1988 the date by which guidelines concerning the reuse of bloodlines would be required (Current law requires the guidelines by January 1, 1988).

(c) Studies of ESRD Program.—The conference agreement includes the House provision. The conferees note that this provision should not be interpreted as implying that the Congress will not make modifications to the program prior to receiving the required report.

9. Certification of Pediatric Heart Transplant Program (Section 4085 and Section 9206(g) of House bill)

Present law

Under current law, the Secretary certifies cardiac transplant centers for Medicare participation and for Medicare reimbursement for transplant services. Under current regulations, no pediatric centers are certified.

House bill

Section 4085.—Requires the Secretary to review, upon the request of a pediatric heart transplant center, whether or not the center meets the standards and criteria for qualification as a Medicare heart tranplant center, other than the standards and criteria regarding the minimum number of heart transplants per year. If

the Secretary determines that the center meets the standards and criteria (other than for the number of heart transplants performed), the Secretary is required to issue a certification of its qualifications.

Section 9206(g).—Requires the Secretary to determine that a pediatric hospital meets the criteria of a Medicare heart transplant facility if: (1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria; (2) the unified program shares the same transplant surgeons and quality assurance program (including oversight commitee, patient protocol, and patient selection criteria); and (3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

Effective date.—

Section 4085.—Applies on or after the date of enactment of this Act.

Section 9206(g).—Applies on or after the date of enactment of this Act.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision in section 4085. (The House provision included a section 9206(g) is included in the agreement—see discussion of Part A).

10. Medicare Contractors (Sections 4012 (b) and (c) of Senate Amendment)

Present law

(a) Payment Safeguards.—The Secretary contracts with fiscal intermediaries and carriers to determine and make payments for Medicare benefits and to perform audits and other related functions.

The Consolidated Omnibus Budget Reconciliation Act of 1985 earmarked $105 million for FY 1986, FR 1987, and FY 1988, for the exclusive purposes of conducting provider cost audits, medical necessity reviews, and the recovery of third-party liability payments.

(b) Prohibition Against Denial Quotas.—The Secretary develops standards and criteria for evaluating the performance of Medicare fiscal intermediaries and carriers. There are currently no statutory requirements specifically relating to criteria related to denial quotas.

(c) Authority of the Secretary.—The Secretary currently has authority to (1) ascertain the accuracy of decisions (including Medical review decisions) made by a fiscal intermediary or a carrier, and (2) prescribe standards for measuring the performance of any such fiscal intermediary or carrier.

House bill

(a) Payment Safeguards.—No provision.

(b) Prohibition Against Denial Quotas.—No provision.

(c) Authority of the Secretary.—No provision.

Senate amendment

(a) Payment Safeguards.—Increases the amount for these activities by $100 million for FY 1988, FY 1989, and FY 1990.

(b) Prohibition Against Denial Quotas.—Prohibits the Secretary, when establishing standards and criteria for fiscal intermediaries and carriers, from evaluating them solely on the basis of any specified numerical ratio of (1) amounts that must be saved through denial of claims under utilization review to (2) amounts expended with respect to such review.

(c) Authority of the Secretary.—Provides that nothing in (a) or (b) above shall be construed to limit the authority of the Secretary, under the law in effect on the date of the enactment of this Act, to (1) ascertain the accuracy of decisions (including Medical review decisions) made by a fiscal intermediary or a carrier. (2) prescribe standards for measuring the performance of any such fiscal intermediary or carrier, and (3) refuse renewal of (or renew conditionally) any such fiscal intermediary agreement or carrier contract for failing to meet such standards.

Effective date.—(a) Applies with respect to fiscal years beginning with FY 1988. (b) and (c) Enactment.

Conference agreement

The conference agreement does not include the Senate amendments.

11. Secondary Payer Provisions (Section 4013(a) of Senate Amendment)

Present law

The Omnibus Budget Reconciliation Act of 1986 provides that Medicare is the secondary payer in the case of disabled Medicare beneficiaries who also had group health insurance through their employer or their spouse's employer. This provision applies to employers who have 100 or more employees.

House bill

No provision.

Senate amendment

Clarifies that this provision applies to government entities, but specifies that the tax penalty does not apply to government entities.

Effective date.—Applies on or after January 1, 1987.

Conference agreement

The conference agreement includes the Senate amendment.

12. Hearings and Appeals (Section 4089 of Senate amendment)

Present law

The Omnibus Budget Reconciliation Act of 1986 established administrative and judicial review procedures for Medicare's Part B. These procedures are comparable to those previously in effect for Part A.

Administrative review has been handled by administrative law judges within the Social Security Administration of the Department of Health and Human Services.

House bill

(a) Maintaining Current System for Hearings and Appeals.—No provision.

(b) Study and Report on Use of Telephone Hearings.—No provision.

Senate amendment

(a) Maintaining Current System for Hearings and Appeals.—Requires any Part A or Part B administrative review hearing before the date on which the Secretary submits the report required in (b) below to be conducted by administrative law judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as hearings are conducted under Section 205(b)(1) of the Social Security Act.

(b) Study and Report on Use of Telephone Hearings.—Requires the Secretary, together with the Comptroller General to conduct a study on holding Part A and Part B administrative review hearings by telephone and to report the results of the study by 6 months after enactment.

Requires that study to focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and to examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).

Effective date.—Enactment.

Conference agreement

(a) Maintaining Current System for Hearings and Appeals.—The conference agreement includes the Senate amendment, with a modification. The requirement that hearings be conducted by administrative law judges of the Social Security Administration continues in effect until the earlier of September 1, 1988, or the date the Secretary files the report required by (b), below.

(b) Study and Report on the Use of Telephone Hearings.—The conference agreement includes the Senate amendment.

13. Rural Health Medical Education Demonstration Projects (Section 4002(c) of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

Requires the Secretary to enter into agreements, within six months after enactment, with four sponsoring teaching hospitals to

conduct three year demonstration projects to assist resident physicians to obtain field clinical experience in rural areas. Each sponsoring hospital is required to enter into an arrangement to provide a small rural hospital with physicians, who have completed one year of residency training, for periods of one to three months.

In selecting applications from potential sponsoring hospitals, the Secretary is required to ensure that four small rural hospitals located in different counties participate. Two of these must be located in rural counties of more than 2,700 square miles, and two must be located in rural counties that have a severe shortage of physicians; one of each type of hospital must be located east and one west of the Mississippi River.

For purposes of determining the amount of additional payments under PPS for indirect costs of graduate medical education activity (the teaching adjustment), residents who participate during any part of a year, are counted as if they worked at the sponsoring hospital on September 1 of that year, and not counted as if working at the small rural hospital.

For purposes of determining the amount of payment for the direct costs of graduate medical education activities in a sponsoring hospital, the amount otherwise permitted under current law is increased by an amount equal to the amount of direct costs the hospital incurs in supervising the training activities of the demonstration project.

Effective date: Enactment.

Conference agreement

The conference agreement includes the Senate amendment.

14. Nurse Services (Section 4131 and 4132 of Senate Amendment)

Present law

(a) Certification and Recertification of the Need for Certain Services.—Under the current Medicare law, specific conditions and limitations are placed on Medicare reimbursement for services. For post-hospital extended care services, the law provides that a physician certify and recertify that such services are required as a condition for Medicare reimbursement.

(b) Coverage of Certain Items and Services Furnished by a Nurse Practitioner or Clinical Nurse Specialist.—No provision.

House bill

No provision.

Senate amendment

(a) Certification and Recertification of the Need for Certain Services.—Amends the provision of the Medicare law relating to certification and recertification by a physician (as a condition of and limitation for payments of Medicare services) to provide for certification by a physician, or in the case of post-hospital extended services, by a physician or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician. Amends also the section of the Medicare law that defines a skilled nursing facility. Provides that where it currently specifies that the health care of every patient be under

the supervision of a physician, that it now specify that the patient be under the supervision of a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician. Provides that where it currently specifies that a physician be available to furnish emergency care that it now specify a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician be available to furnish such care.

Provides for a definition of nurse practitioner and clinical nurse specialist. Specifies that an individual shall be treated as a nurse practitioner or clinical nurse specialist if the individual (1) is licensed to practice professional nursing; (2) performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law); and (3) (A) is master's prepared in nursing; or (B) holds a masters degree in a related field and is certified or certified eligible by a national organization; or (C) has completed a nurse practitioner continuing education program and is certified or certified eligible.

Provides that a nurse practitioner or clinical specialist works in collaboration with a physician where the nurse and physician act pursuant to an agreement that allocates responsibility for decisions and actions, but allows each professional to retain responsibility for their respective actions and engage in such actions independently.

Makes other conforming changes in definitions in the Medicare statute.

(b) Coverage of Certain Items and Services Furnished by a Nurse Practitioner or Clinical Nurse Specialist.—Amends the provision of Medicare law relating to payment of benefits to provide that, with respect to items and services furnished by a nurse practitioner or clinical nurse specialist in a skilled nursing facility and services and supplies furnished as an incident to such services, that the amount paid be equal to 100 percent of the amount determined as the reasonable charge for such items and services under as determined under section 1824(b) (10) (sic). Provides that in providing for the items and services described above that each carrier shall require that payment be made on the basis of assignment, except that the reasonable charge shall be determined as 75 percent of the prevailing charge paid for similar items and services provided by physicians in the same locality.

Provides for technical and conforming changes in the Medicare statute.

Effective date.—Applies to items and services furnished on or after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendments.

15. Miscellaneous and Techincal Provisions Relating to Parts A and B (Section 9204, Sections 9233 (a), (c), (e), and (f), Section 4076 of the House bill; Section 4087 and 3093 of Senate amendment)

Present law

(a) Clarification of Criminal Penalties for Willful Misrepresentations.—Medicare law currently makes it a felony and permits fines

of up to $25,000 or jail terms of up to 5 years for officers of a hospital, skilled nursing facility, or home health agency who falsify conditions of operation of the facility in order to qualify or continue to qualify for payment from Medicare.

Before P.L. 100–93 Medicare law did not include officers of other entities which participate in Medicare among those who are subject to criminal sanctions. However P.L. 100–93 includes officers of other entities.

(b) Extend and Clarify Prohibition on Cost Savings Policies Before Beginning of Fiscal Year.—The Secretary is prohibited from issuing any regulation, instruction, or other policy in final form prior to September 1, 1987 which is estimated by the Secretary to result in a net reduction in expenditures during FY 1988 of more than $50 million for hospital or physician services provided under Medicare.

(c) Podiatrists.—(1) Definition as Physicians.—Podiatrists are defined as physicians with respect to the funtions which they are legally authorized to perform under the laws of the State in which they practice but only if such practice is consistent with the policy of the institution or agency in which the services are provided.

(2) Accrediting Organization.—Medicare law refers to interns and residents that are in teaching programs approved by various certifying organiations. One of these is the Council on Podiatry Education of the American Podiatry Association. In 1984, the name of this organization was changed to the Council on Podiatric Medical Education of the American Podiatric Medical Association.

(d) Recovery of Payments for Certain Pacemaker Devices.—The Secretary is required, through the Commissioner of the Food and Drug Administration, to provide for a registry of all cardiac pacemaker devices and leads for which payment has been made under Medicare. Such registry is to include information on the device, date of implantation, express or implied warranties under contract or State law, and certain other information that would assist the Secretary in determining when payments may properly be made under Medicare. Physicians and providers are required to submit information to the registry.

The Secretary may require, by regulation, that providers return to manufacturers those devices and leads removed from patients whose implantation was paid for under Medicare, and that they not charge beneficiaries for replacement if the device or lead is not returned to the manufacturer for testing.

The Secretary may deny payments under Medicare for implantation and replacement if: (1) the physician or provider has failed to submit information to the registry, (2) the provider has failed to return devices removed to the manufacturer, or (3) if the manufacturer has failed to perform and report on the testing of returned devices.

(e) Technical Part A and B Amendments.—Current law contains a number of technical errors.

House bill

(a) Clarification of Criminal Penalties for Willful Misrepresentations.—

Section 9233(a).—Clarifies that officers of other entities (including health maintenance organizations and competitive medical plans) are officers who would be held criminally liable for willful misrepresentations in an attempt to qaualify for Medicare payments.

Section 4076.—No provision.

Effective date.—

Section 9233(a).—Applies on or after the date of enactment of this Act.

(b) Extend and Clarify Prohibition of Cost Savings Policies Before Beginning of Fiscal Year.—

Section 9233(c).—Prohibits the Secretary from issuing any regulation, instruction, or other policy in final form before October 15, 1988 which is estimated by the Secretary to result in a net reduction in Medicare expenditures in FY 1989 of more than $50 million.

Section 4076.— No provision.

Effective date.—

Section 9233(c).—Enactment.

(c) Podiatrists.—

(1) Definition as Physicians.—

Section 9233(e).—Defines podiatrists as physicians with respect to the functions which they are legally authorized to perform under State laws.

Section 4076.—Similar provision.

(2) Accrediting Organization.—

Section 9233(e).—Changes reference to the Council *on* Podiatric Medical Education of the American Podiatric Medical Association.

Section 4076.—Similar provision.

Effective date.—

Section 9233(e).—Enactment.

Section 4076.—Enactment.

(d) Recovery of Payments for Certain Pacemaker Devices.—No provision.

(e) Technical Part A and B Amendments.—

Section 9233(f).—Corrects technical errors.

Section 4076—No provision.

Effective date.—

Section 9233(f).—Applies on or after the date of enactment of this Act.

Senate amendment

(a) Clarification of Criminal Penalties for Willful Misrepresentations.—No provision.

(b) Extend and Clarify Prohibition on Cost Savings Policies Before Beginning of Fiscal Year.—No provision

(c) Podiatrists.—

(1) Definition as Physicians.—No Provision.

(2) Accrediting Organization.—Similar provision, although it refers to the Council of Podiatric Medical Education of the American Podiatric Medical Association.

Effective date.—Enactment.

(d) Recovery of Payments for Certain Pacemaker Devices.—Requires that information reported to the registry include any amounts paid to providers under an express or implied warranty under contract or State law. The Secretary may require that pro-

viders make repayments to the Secretary with respect to any cardiac pacemaker device or lead which has been replaced by the manufacturer or for which the manufacturer has made payment to the provider under an express or implied warranty. The Secretary may deny payments to providers with respect to the implantation or replacement of pacemaker devices or leads if the provider fails to make required repayments to the Secretary.

Effective date.—January 1, 1988.

(e) Technical Part A and B Amendments.—No provision.

Conference Agreement

(a) Clarification of Criminal Penalties for Willful Misrepresentations.—The conference agreement includes the House provision.

(b) Extend and Clarify Prohibition on Cost Savings Policies Before Beginning of Fiscal Year.—The conference agreement includes the House provision.

(c) Podiatrists.—The conference agreement includes the House provision. The conferees desire to clarify that podiatrists are authorized to serve on utilization review committees.

(d) Recovery of Payments for Certain Pacemaker Devices.—The conference agreement includes the Senate amendment.

(e) Technical Part A and B Amendments—The conference agreement includes the House provision.

C. Medicare Provisions (Part B)

1. Physician Payment Update (Sections 9261, 4003, and 4004 of House bill: Sections 4021 (a) and (b) of Senate amendment.

Present law

Payments are made to physicians on the basis of reasonable charges. The reasonable charge for a service is the lowest of the physician's actual charge, the physician's customary charge, or the prevailing charge for the service in the community. Annual increases in prevailing charges are limited by the Medicare Economic Index (MEI) which reflects yearly increases in overhead costs for physicians and general changes in earnings levels. The MEI was set by Congress at 3.2% in 1987. HCFA has announced an MEI increase of 3.6% for 1988.

Payments for physicians' services are made on an assigned or unassigned basis. If assignment is accepted, the physician agrees to accept Medicare's determination of the reasonable charge as payment in full for covered services. On assigned claims, beneficiary liability is limited to the 20% coinsurance (after the deductible has been met). In the case of nonassigned claims, physicians may "balance bill" the patient for the difference between Medicare's reasonable charge and the physician's actual charge.

Physicians who agree to accept assignment on all claims for the forthcoming year are known as participating physicians. The prevailing charge limit for nonparticipating physicians is set at 96% of that for participating physicians. Nonparticipating physicians are subject to a limit on their actual charges known as Maximum Allowable Actual Charges (MAACs).

OBRA (1986) authorized bonuses by April 1, 1988, to carriers for their success in increasing the proportion of participating physicians during the enrollment period at the end of 1987.

House bill

(a) Three-Month Freeze on Increases in Physician Payments.—No provision.

(b) Payment Update.—

Section 9261.—Specifies a 2% increase in the MEI in 1988 for participating physicians.

Sets the prevailing charge limit for nonparticipating physicians at 95% of that for participating physicians. As a result, the increase for nonparticipating physicians in 1988 is approximately 1%.

Section 4003.—Specifies that the MEI increase in 1987 is 3.2%.

Specifies that the MEI increase for 1988 is 6% for primary care services and 2% for other physicians services. Primary care services are defined as physicians services which constitute immunization injections: office medical services; home medical services; skilled nursing, intermediate care, and long-term care medical services; or nursing home, boarding home, domiciliary, or custodial care medical services (as defined in procedure code by the Secretary).

(c) Incentive Payments for Primary Care Physicians in Underserved Rural Areas.—

Section 9261.—No provision.

Section 4004.—Specifies that in the case of services furnished by a primary care physician in a rural area. Part B payments otherwise made are to be increased by 10% of the prevailing charge. Incentive payments are made on a monthly or quarterly basis.

Defines a primary care physician as one whose primary practice of medicine is in the field of family practice, general practice, general internal medicine, gynecology, or pediatrics. A rural area is defined as one which is a class 1 or class 2, rural, primary medical care health manpower shortage area as designated by the Secretary under Section 332 of the Public Health Service Act.

Requires the Secretary to study and report to the Congress by July 1, 1988 on the feasibility of making such additional payments for urban underserved areas.

Effective date.—

Section 9261—Applies to services furnished on or after January 1, 1988.

Section 4003.—Enactment.

Section 4004.—Applies to services performed on or after April 1, 1988.

Senate amendment

(a) Three-Month Freeze on Increases in Physician Payments.—Holds the prevailing and customary charges for physicians' services furnished during the three-month period beginning January 1, 1988 at the 1987 levels. Through January 15, 1988, the benefit payments would also reflect the sequestration reductions as required under Section 4014 of this Act.

Specifies that the MAACs for nonparticipating physicians for the three-month period beginning January 1, 1988, are the same as those determined for 1987. The MAAC otherwise determined for 1988 takes effect April 1, 1988.

Specifies that: (1) agreements with participating physicians in effect on December 31, 1987 remain in effect for the three month period beginning January 1, 1988, unless the physician requests that it be terminated; and (2) agreements entered into for 1988 are effective for the nine month period beginning April 1, 1988.

Modifies the OBRA (86) carrier bonus provision by specifying that such payments are to be made by July 1, 1988, for the enrollment period prior to April 1, 1988.

(b) Payment Update.—Specifies that the MEI increase for services furnished in 1988 after April 1, 1988 is the full amount of the percentage increase in the MEI for primary services and 0% for other physician's services. The definition of primary care services is similar to that in Section 4003, except that immunization injections are not included and emergency department visits are added.

(c) Incentive Payments for Services in Underserved Rural Areas.—Provides for incentive payments in the case of physician services furnished on an assignment-related basis in a rural area (as defined under PPS) which is designated as a health manpower shortage area under the PHS Act. Part B payments otherwise made are to be increased by 5%. Incentive payments are made on a monthly or quarterly basis.

Effective date.—(a) and (b) Enactment. (c) Applies with respect to services furnished on or after April 1, 1989.

Conference agreement

(a) *Three-Month Freeze on Increases in Physician Payments.*—The conference agreement includes the Senate amendment.

(b) *Payment Update.*—The conference agreement includes the Senate amendment with a modification. The agreement provides that for the nine month period beginning April 1, 1988, the increase in the MEI for participating physicians is 3.6 percent for primary care services, and 1.0 percent for other services. For nonparticipating physicians, the increase is 3.1 percent for primary care services and 0.5 percent for other services.

For physicians' services furnished in 1989, the percentage increase for participating physicians is 3.0 percent for primary care services and 1.0 percent for other services. For nonparticipating physicians, the increase is 2.5 percent for primary care services and 0.5 percent for other services.

The cumulative effect of the 0.5 percent differentials for participating physicians in each year is to increase the existing 4 percent payment differential for participating physicians to a total of 5 percent.

The Conference agreement adopts the Senate definition of primary care which represents the following categories of visits and current HCPCS procedure codes: office visits (90000 through 90080); home visits (90100 through 90170); skilled nursing, intermediate care and long-term care facility visits (90300 through 90370); nursing home, boarding home, domiciliary or custodial care medical visits (90400 through 90470); and emergency department visits

(90500 through 90570). The Conferees note specifically that the higher MEI is intended to apply to the visits but not to any separate billable services that are done in conjunction with such visits.

(c) *Incentive Payments for Physicians for Services in Underserved Rural Areas.*—The conference agreement includes the Senate amendment with an amendment. The agreement specifies that the incentive payments are limited to primary care services furnished by all physicians in an area (as defined in PPS) or a class 1 or class 2 health manpower shortage area. The bonus payments, which equal 5 percent of the allowed payment amounts, will apply with respect to services furnished in rural areas on or after January 1, 1989 and to other services on or after January 1, 1991.

The conference agreement also includes the study contained in the Energy and Commerce provision regarding the feasibility of making bonus payments to physicians located in urban health manpower shortage areas. The report is due by January 1, 1990.

2. Reduction of Payments for Certain Procedures (Sections 9262 and 4001 of House bill: Section 4021(d) of Senate amendment)

Present law

(a) Payment Reductions.—OBRA specified that the maximum allowable prevailing charges, otherwise recognized for participating and nonparticipating physicians performing cataract surgical procedures, are reduced by 10% with respect to procedures performed in 1987 and 2% with respect to procedures performed in 1988. In no case can the reduction for a surgical procedure result in a prevailing charge that is less than 75% of the weighted national average of such prevailing charges for such procedure for all localities in the U.S. in 1986.

The law authorizes the Secretary, under the so-called "inherent reasonableness" authority to establish payment limits based on considerations other than actual, customary or prevailing charges. The law specifies the circumstances under which a departure from the standard is appropriate.

Actual Charge Limit.—The law establishes maximum allowable actual charges (MAAC) for nonparticipating physicians. If an adjustment is made in payments for cataract surgery, a special limit is applied for actual charges of nonparticipating physicians. In the first year, the limit is 125% of the reduced prevailing charge plus one-half of the difference between the physician's actual charge in the preceding period and the 125% amount. In the second year the limit is 125% of the reduced prevailing charge. Sanctions may be imposed if a physician knowingly and willfully violates the limits. Similar limits apply with respect to physicians supervising nurse anesthetists, cataract surgery anesthesia, and payment reductions under the Secretary's inherent reasonableness authority.

House bill

(a) Payment Reductions.—

Section 9262.—Replaces the 2% reduction for cataract surgery scheduled for 1988 with a reduction equal to 15% over the amount recognized in 1987. The prevailing charges for additional specified procedures are to be reduced by 15% over the amount recognized in 1987. The procedures are: contrary artery bypass, total hip re-

placement, transurethral resection of the prostate, suprapubic prostatectomy, diagnostic and therapeutic dilation and curettage, and carpal tunnel repair.

Sets the floor at 80% of the weighted national average prevailing charge for the procedure in 1987. Judicial review of this determination is prohibited.

Section 4001.—Replaces the 2% reduction for cataract surgery scheduled for 1988 with a reduction equal to 5% over the amount recognized in 1987. For other specified procedures, the reduction is equal to 10% over the amount recognized for 1987. The specified procedures are the same as those in Section 9361, except that therapeutic dilation and curettage is not included.

Specifies that the prevailing charge in a carrier locality is further reduced by an additional amount equal to 10% of the amount by which the prevailing charge for the locality (after the across-the-board reduction) exceeds the weighted average of prevailing charges in the region in which the locality is situated. The same regions are to be used as are designated for PPS.

Specifies that in no case can the reduction result in a prevailing charge that is lower than 80% of the weighted national average of such prevailing charges for such procedures in all localities in 1987.

(b) Actual Charge Limit.—

Section 9262.—Specifies that the special limits for cataract surgery and other procedures identified under (a) above are set as follows:

(i) in the first year, 125% of the reduced prevailing charge plus one-half of the difference between the 125% level and the previous year's MAAC.

(ii) in the second year, 125% of the reduced prevailing charge; and

(iii) during any subsequent year, 115% of the reduced prevailing charge.

Specifies that limits do not apply to items and services furnished after the earlier of December 31, 1990 or one year after the date of the Secretary reports to Congress on the development of a relative value scale.

Provides that the special limits also apply with respect to payment reductions under the Secretary's inherent reasonableness authority, physicians supervising nurse anesthetists, and cataract surgery anesthesia.

Specifies that sanctions may be imposed for violations of these limits (whether or not there are also violations of the MAAC limits).

Section 4001.—Similar provision except: (i) the limit remains at 125% in the third and subsequent years; (ii) no modification is made in the other special limits; and (iii) no reference is made to MAAC violations in the sanctions provision.

Effective date.—

Section 9262.—Applies to items and services furnished on or after January 1, 1988, with respect to the 80% floor for cataracts and for purposes of the cataract anesthesia reductions, the special limits shall not apply for the first 12-month period and the reference to the following 12-month period is deemed a reference to 1988.

Section 4001.—Applies to procedures performed on or after January 1, 1988.

Senate amendment

(a) Payment Reductions.—Reduces prevailing charges for specified procedures performed in 1988 according to the following percentages:

(1) 15% in the case of a prevailing charge that is at least 150% of the weighted national average (as determined by the Secretary) of prevailing charge for such procedure for all localities in the U.S.

(2) 0% in the case of a prevailing charge that does not exceed 100% of such average; and

(3) A percentage between 0% and 15% determined on the basis of a straight-line sliding scale (as determined by the Secretary) for other prevailing charges.

Specifies that the procedures subject to the reductions are: cataract exraction with intraocular lens implant, intraocular lens insertion, coronary artery bypass surgery, total hip replacement, suprapubic prostatectomy, transurethral resection of the prostate, diagnostic dilation and curettage, pacemaker surgery, and carpal tunnel release.

(b) Actual Charge Limit.—Similar to Section 4001 except the first special limit applies for the 9-month period beginning April 1, 1988, and equals 125% of the reduced prevailing charge plus one-half of the difference between the 125% level and the 1987 MAAC.

Effective date.—Applies to procedures performed on or after April 1, 1988.

Conference agreement

(a) Payment Reduction.—The conference agreement includes the Senate amendment with a modification. The Secretary is required to reduce prevailing charges for the following selected overpriced procedures. The procedures (with corresponding HCPCS codes) are: coronary artery bypass surgery (33510–33528); total hip replacement (27130–27132); cataract surgery (66830–66985); transurethral prostatectomy (52601); suprapubic prostatectomy (55821); diagnostic and/or therapeutic dilation and curettage (58120); carpal tunnel neurolysis and/or transposition (64721); pacemaker surgery (33206–33208); bronchoscopy (31622–31626); upper gastrointestinal endoscopy (43235–43239); knee arthroscopy (29880–29881); knee arthroplasty (27446–27447). The conferees expect the Secretary to make appropriate changes to the list of procedure codes if the coding system changes from year to year.

The prevailing charges for the specified procedures are reduced by 2 percent for the 9 month period beginning April 1, 1988. The prevailing charges are further reduced by a straight-line sliding scale. The additional reduction is equal to $^{3}/_{13}$ of a percentage point for each percentage point by which the reduced prevailing charge exceeds 85 percent of the weighted national average of reduced prevailing charges. In no case can the reduction under the sliding scale reduce the prevailing charge below 85 percent of the national average of the prevailing charges (as reduced by the 2 percent).

The conferees expect that the provision will be implemented on April 1, 1988 and understand that HCFA will have minimal lead time. In view of time constraints and the highly technical nature of the calculations involved, the conferees intend that the Secretary should have sole discretion with regard to choice of data and methods used to calculate national average prevailing charges for purposes of setting the payment floor. Therefore, the conference agreement includes the Ways and Means provision which precludes judicial or administrative review of the Secretary's determination of prevailing charge floors.

The conference agreement provides that the Secretary shall develop a geographic index that reflects geographic differences in the relative costs of physician practice and costs of living compared to the national average.

(b) Actual Charge Limit.—The conference agreement includes the Senate amendment. The agreement consolidates current law provisions relating to calculation of MAAC.

3. Limits on Payments for Ophthalmic Ultrasound (Section 9263(a)(i) of House bill.

Present law

There are no special limits on payment for ophthalmic ultrasound procedures.

House bill

Limits the prevailing charge for A-mode ophthalmic ultrasound procedures to 5% of the prevailing charge level established for extracapsular cataract removal with lens implementation. The special limit on actual charges specified under Item 2, above applies to these services.

Effective date.—Applies to items and services furnished on or after January 1, 1988.

Senate amendment

No provision.

Conference agreeement

The conference agreement includes the House provision. The agreement limts Medicare reimbursement for ophthalmic ultrasound (A-scan) procedures (HCPCS codes 76511, 76516 and 76519 and any other similar codes) to 5 percent of the prevailing charge for cataract surgery with intraocular lens implantation (HCPCS code 66984).

4. Customary Charges for New Physicians (Section 4021(c) of Senate Amendment)

Current law

Under current carrier manual instructions in place since the early years of Medicare, customary charges of new physicians have been set at the 50th percentile of the weighted customary charge distribution for all physicians in the locality. This policy was initiated because it was necessary to establish the customary charge for a new physician until the physician has sufficient actual charges on which to base the customary charge. Actual payment to a new

physician is based on the lower of the physician's actual charge for the service, the physician's customary charge for the service (established at the 50th percentile) or the locality prevailing charge.

The carrier manual specifies that the 50th percentile will be used as the new physician's customary charge until the next fee screen update for which the carriers has at least three months actual charge experience for the physician in the same base period used to calculate the customary charges for established physicians. That is, with the update on January 1st of a year, a new physician must have actual charges for at least three months during the 12-month period ending June 30th of the previous year in order to base the new physician's customary charges on the physician's actual charges rather than the 50th percentile.

The new physician policy was established prior to the Medicare Economic Index, i.e., when the prevailing charge was set at the 75th percentile of customary charges in the locality unconstrained by the MEI. As a result of the application of the MEI, many situations arise whereby the 50th percentile is greater than the prevailing charge (as constrained by the MEI).

House bill

No provision.

Senate amendment

Requires the Secretary to set customary charges of new physicians, who do not practice in health manpower shortage areas as defined under the Public Health Service Act, at no more than 80 percent of the prevailing charge for the service.

Effective date.—Applies to physicians who first furnish services to Medicare beneficiaries after January 1, 1988.

Conference agreement

The conference agreement includes the Senate amendment with amendments. The Conference agreement restores the effect of the new physician policy for most new physicians by establishing the customary charges of most new physicians at no more than 80 percent of the prevailing charge as adjusted by the MEI for participating and non-participating physicians. The Senate bill retained the current customary charge method for a new physician in a rural underserved area. The Conference agreement preserves the Senate exemption and expands it to include primary care services for new physicians in all areas. This policy was adopted because of the concern that these services are undervalued in Medicare. The Conference agreement does not modify the current policy whereby physicians who move to new areas can take their customary charge profiles with them to the new area.

5. Payments to Anesthesiologists, Radiologists and Pathologists (Sections 4002, 4006, 4007, and 4008 of House Bill).

Present law

(a) Payments to Anesthesiologists.—Anesthesiologists services are reimbursed on a reasonable charge basis. Anesthesiologists may also bill for the supervision of one or more concurrent procedures performed by qualified anesthetists or certified registered nurse an-

esthetists (CRNAs). The reasonable charge for anesthesiology services is the sum of base, time, and modifier units times a conversion factor. The number of base units is determined by the procedure. The time units represent either (1) 15 minutes intervals if the physician performs the services or if the anesthetist or CRNA is employed by the physician, or (2) 30 minutes if the anesthetist or CRNA is employed by the hospital. If more than four concurrent procedures are supervised, the physician may bill only for pre-anesthesia services personally furnished to the patient. The reasonable charge in this case may not exceed the base units assigned the procedure plus one time unit.

OBRA reduced the base units allowed for anesthesia services provided in connection with cataract surgery and iridectomies from 8 to 4. If the physician supervises more than four concurrent services, no more than 3 base units are allowed.

(b) Payments to Radiologists.—(1) Radiology services, whether performed by any physician or by a physician either certified or eligible to be certified by the American Board of Radiology, are reimbursed on the basis of reasonable charges, determined by the lesser of the billed amount for the service, the customary charge by the physician for the service, and the prevailing charge for the service by all physicians in the pricing locality. After adjustment for the annual deductible amount, Medicare pays 80 percent of the reasonable charge.

(2) Participating physicians are physicians who have agreed to accept assignment on all claims for the forthcoming year; that is, to accept Medicare's reasonable charge as payment in full and not to bill the patient for any amount in excess of the reasonable charge. Non-participating physicians may bill the patient for amounts in excess of Medicare's reasonable charge on unassigned claims. The prevailing charges of non-participating physicians are 96 percent of the prevailing charges of participating physicians.

(3) If the Secretary reduces a prevailing charge using the inherent reasonableness authority, or for cataract surgery as required by OBRA, the actual charges of non-participating physicians are limited. In these cases, a non-participating physician's actual charge is (1) limited in the first year following a reduction to no more than 125 percent of the reduced prevailing charge plus half the difference between the reduced prevailing and the physician's actual charge for the service during the preceding year, and (2) limited to no more than 125 percent of the reduced prevailing charges in subsequent years.

(4) A physician's decision to become a participating physician applies to all services provided during the period of participation.

(5) Carriers make payments for services equal to 80 percent of the reasonable charge, adjusted for any applicable deductible amounts. The physician or supplier is responsible for collecting any deductible and coinsurance amounts from the beneficiary.

(6) The Secretary is required to develop a relative value scale for physician services and report to Congress no later than July 1, 1989. The report must include recommendations on the application of the scale to payments for physician services furnished after December 31, 1989.

(c) Pathology Services.—Pathology services under Part B are paid on the basis of reasonable charges, determined as the lesser of the billed amount for the service, the cusotmary charge by the physician for the service, and the prevailing charge for the service by all physicians in the pricing locality.

The Secretary is required to develop a relative value scale for all physician services and report to Congress no later than July 1, 1989. The report must include recommendations on the application of the scale to payments for physician services furnished after December 31, 1989.

(d) Prohibition of Prospective Payment System for "RAP" Services.—OBRA required the Secretary to study and report to Congress concerning the design and implementation of a prospective payment system for radiology, anesthesiology, and pathology services provided under Part B to hospital inpatients.

(a) Payments to Anesthesiologists.—Provides that, in determining the reasonable charge for the concurrent direction of 2 or more nurse anesthetists for services on or after January 1, 1988, the number of base units recognized (other than for cataract surgery or iridectomies) are reduced by 10 percent for 2 concurrent procedures, 25 percent for 3 concurrent procedures and 40 percent for 4 concurrent procedures. For 2 or more concurrent cataract and iridectomy procedures, the base units recognized are reduced by 10 percent. The Secretary shall require that claims for the supervision of CRNAs indicate the number and types of concurrent procedures, and the names of the CRNAs supervised.

Provides that the Secretary, in consultation with groups representing physicians who furnish anesthesia services, establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services on or after January 1, 1989. The guide is to be designed to result in expenditures that would not exceed the amount of expenditures that would otherwise occur.

(b) Payments to Radiologists.—

(1) Requires that radiology services, performed by or under the direction of physicians that are either certified or eligible to be certified by the American Board of Radiololgy, are to be reimbursed at 80 percent of the lesser actual charge or a radiology fee schedule. The Secretary is required to develop a relative value scale (RVS) for radiology services. Using this RVS and appropriate conversion factors, the Secretary shall develop fee schedules (on either a regional, State-wide or carrier service area basis) for payment for radiology services under Part B. The Secretary shall also develop an appropriate index for updating the fee schedules annually for services provided in years after 1989.

Requires the Secretary in developing the RVS, fee schedules and updating index, to consult with the Physician Payment Review Commission, the American College of Radiology and other organizations representing physicians and suppliers who provide radiology services. The Secretary shall also share with these entities the data and data analyses used to develop the RVS, fee schedules and updating index, including data on current variations in Medicare payments by geographic area, and by services and physician specialty.

Requires the Secretary in developing the RVS, fee schedules and updating index, to consider variations in the cost of furnishing such services between geographic areas or, sites of service. The Secretary may take into consideration other factors respecting the manner in which physicians in different specialties furnish such services to assure equitable payment amounts and to promote effective and efficient provision of radiology services by physicians in different specialties.

Provides that the fee schedules are to be designed to produce aggregate savings (net of deductible and coinsurance amounts) of not more than $20 million for radiologic services provided in 1989, and of not less than $30 million for each year for services provided in 1990 and 1991.

(2) Requires that the fee schedule be established such that the payment rate recognized of non-participating physicians is equal to 96 percent of the payment rate for participating physicians.

(3) Requires that for radiology services that are furnished after January 1, 1989, are reimbursed on the basis of the fee schedule, and are billed by a non-participating physician, the actual charge may not exceed 125 percent of the fee schedule amount in 1989, 120 percent in 1990, and 115 percent after 1990. If a physician knowingly and willfully imposes a charge in excess of these amounts, the Secretary may bar the physician from the program for a period not to exceed five years, may impose civil money penalties, or both.

(4) Requires the Secretary to permit certain physicians and suppliers to enter into a participation agreement only with respect to radiologic services. These physicians and suppliers are those who furnish radiologic services that are performed by or under the direction of a physician who is either certified or eligible to be certified by the American Board of Radiologists and who are paid under the fee schedule.

(5) Requires that in the case of participating physicians and suppliers furnishing radiologic services, the carrier shall advance to the physician or supplier from the Supplementary Medical Insurance Trust Fund an amount equal to any coinsurance or deductible amounts. The carrier shall make arrangements to collect the amounts so advanced and return them to the Trust Fund. The Secretary shall establish appropriate guidelines for the advancing and collecting of these amounts.

(6) Requires the Secretary to establish the RVS and fee schedules and to report to Congress on the development of the fee schedules by not later than August 1, 1988.

(c) Pathology Services.—Requires the Secretary to develop a relative value scale (RVS) for pathology services. Using the RVS and appropriate conversion factors, the Secretary shall develop fee schedules (on a regional, State-wide or carrier service area basis) for payment of pathology services. The Secretary shall also develop an index for updating the fee schedules annually for services provided in years after 1990.

Requires the Secretary in developing the RVS, fee schedules and updating index to consult with the Physician Payment Review Commission, the American College of Pathologists and other organizations representing physicians who provide such services. The Secretary will share with these entities the data and data analyses

used to develop the RVS, fee schedules and updating index, including data on current variations in Medicare payments by geographic area, and by service and physician specialty. In developing the fee schedules, the Secretary shall consider variations in the cost of furnishing pathology services among geographic areas.

Requires the Secretary to report, not later than April 1, 1989, to the House Committees on Energy and Commerce and Ways and Means and Senate Finance Committee on the RVS, fee schedules and updating index. This report shall include recommendations on how to protect beneficiaries against excessive charges for pathology services in excess of the payment amounts established by the fee schedules.

(d) Prohibition of Prospective Payment System for "RAP" Services.—Provides that nothing in OBRA or any other provision of law shall be construed as authorizing or requiring the Secretary to implement a prospective payment system for inpatient radiology, anesthesiology, and pathology services. The Secretary is prohibited from conducting any new study or demonstration project designed specifically to reform the payment methodology for inpatient radiology, anesthesiology and pathology services unless specifically directed to do so under law.

Effective dates.—(a), (c), and (d) apply on enactment. (b) applies to services performed on or after January 1, 1989 and until such time as the Secretary implements physician fee schedules based on a relative value scale for all physician services.

Senate amendment

(a) Payments to Anesthesiologists.—No provision.
(b) Payments to Radiologists.—No provision.
(c) Pathology Services.—No provision.
(d) Prohibition of Prospective Payment System for "RAP" Services.—No provision.

Conference agreement

(a) Payments to Anesthesiologists.—The conference agreement includes the House provision with amendments.

The General Accounting Office is required to conduct two studies of payments to anesthesiologists for the supervision of CRNAs. The first GAO study shall examine whether the payments for physician supervision of CRNAs are excessive relative to payments for their physician services, and would study the appropriateness of anesthesia times reported for Medicare reimbursement purposes. To the extent feasible, the GAO shall examine differences in anesthesia input, skill, risk, etc. during different portions of the total time. The GAO shall also examine the extent to which physicians bill and carriers recognize modifier units for reimbursement purposes and the appropriateness of such billings. In conducting this study, the GAO shall focus on procedures accounting for the highest amount of Medicare anesthesia dollars. The GAO shall make recommendations regarding the appropriateness of the anesthesia times recognized by Medicare for reimbursement purposes and shall recommend ways to more narrowly define anesthesia times. The second GAO study concerns the impact of the payment reductions required under this provision with regard to the utilization of

CRNAs. In addition, the provision would only apply to services provided on or after April 1, 1988 and before January 1, 1991.

(b) Payments to Radiologists.—The conference agreement includes the House provision with amendments. The agreement strikes the provision permitting physicians to enter into participation agreements limited to radiologic services. Further, the agreement strikes the provision that would permit carriers to advance deductible and coinsurance amounts to participating physicians and suppliers and then to arrange to collect the amounts so advanced. The fee schedule would apply to radiology services provided by physicians that are board certified or board eligible, and physicians whose Medicare charges are at least 50 percent radiology services. The Secretary would develop a preliminary fee schedule which would be budget neutral in 1989 with respect to current law. For payment purposes, the amount if allowed is 97 percent of the fee schedule. The fee schedule would be updated by the MEI in subsequent years.

(c) Pathology Services.—The conference agreement includes the House provision.

(d) Prohibition of Prospective Payment System for "RAP" Services.—The conference agreement does not include the House provision. The conferees note that current law does not permit the Secretary to establish by regulation a DRG-based reimbursement system for "RAP" services. The conferees also believe that the Secretary should delay any demonstration of a RAP/DRG reimbursement system under Medicare until further studies have been completed.

6. Prohibition of Billing for Certain Purchased Services (Section 9264 of House Bill).

Present Law

(a) Payments for Diagnostic X-ray and Other Diagnostic Tests.—Diagnostic x-ray and other diagnostic tests (excluding diagnostic laboratory services) are reimbursed on a reasonable charge basis and may be billed by the physician ordering the test or by the entity performing the test, but not both. Diagnostic laboratory tests, paid on the basis of a fee schedule, must be billed by the physician or laboratory that actually performs the service, except that if a physician performed or supervised the test, payment may be made to a physician who shares a practice with the performing physician. If the physician does not perform the service, he may only bill for a specimen collection and handling fee.

(b) Adjustment in Medicare Prevailing Charges.—The Secretary may reduce the prevailing charge for a service if it is found that, according to certain guidelines and criteria, the charge for the service is inherently unreasonable. If the prevailing charge for a service is reduced under this authority, the actual charges of physicians are limited according to a specified procedure.

House bill

(a) Payments for Diagnostic X-ray and Other Diagnostic Tests.—Provides that payments under Part B for diagnostic x-ray and other diagnostic tests may only be made to the entity performing or supervising the provision of such tests. If a physician performs

or supervises such tests, payment may be made to another physician with whom the performing physician shares a practice.

Provides that a physician or supplier may not bill a beneficiary for a diagnostic test when payment may not be made because the physician did not perform the test. The Secretary may impose sanctions on physicians or suppliers who knowingly, willfully and repeatedly violate this rule. These sanctions may include suspension from the program for up to five years, civil money penalties, or both.

(b) Adjustment in Medicare Prevailing Charges.—Requires the Secretary to review payment levels for diagnostic x-ray and other diagnostic tests (excluding diagnostic laboratory services) which are commonly performed by independent vendors, sold as services to physicians and billed by such physicians to determine the reasonableness of payment amounts for such tests and the associated professional service components of such tests. If the Secretary finds, after appropriate notice and opportunity for public comment, that the prevailing charge levels are excessive, the Secretary shall establish new prevailing charges at levels that are consistent with maintaining wide and consistent access to the service, and that reflect the purchase price of the test without markup. The Secretary may, after appropriate notice and opportunity for public comment, establish guidelines for determining such new prevailing charges and may delegate the establishment of new prevailing charges to carriers.

Provides that if the prevailing charges are reduced, the actual charges for the services will be limited in accordance with the same rules that would apply in the case of a reduction under the inherent reasonableness authority, as modified by Item 2, Section 9362 above.

Effective dates.—(a) applies to diagnostic tests performed on or after January 1, 1988 except that the Secretary may delay the application of the provision until not later than January 1, 1989 in cases in which there are inadequate data to establish appropriate payment levels, (b) requires the Secretary to complete the review and make adjustments to prevailing charges for items and services furnished no later than January 1, 1989.

Senate amendment

No provision.

Conference agreement.

(a) Payments for Diagnostic X-ray and Other Diagnostic Tests.—The conference agreement contains the House provision with amendments. Under the conference agreement physicians would be allowed to bill for services purchased from outside vendors as under current law.

However, the conference agreement would eliminate the physician mark-up for services obtained from outside suppliers. The Medicare payment is limited to the actual acquisition cost for the purchased service (net of any discount). The physician is required to indicate the actual acquisition price on a request for payment.

The mark-up is eliminated as follows: If a physician bills a global fee for a service (i.e., a fee for technical and professional compo-

nents combined), then the carrier limits the global fee to the sum of (i) the reasonable charge for associate professional services plus (ii) the lower of the reasonable charge for the technical component of the test or the actual acquisition cost (net of any discount). If a physician bills separately for a technical and professional component, then separate limits apply. Carriers would gap-fill any professional component fees for which they did not have established allowances.

If a physician does not indicate the acquisition price from an outside vendor on the bill, then no payment may be made to the physician on an assigned basis and the physician is precluded from billing the beneficiary for such services on an unassigned basis subject to 1842(j) sanctions.

The conference agreement provides that this provision shall apply to services furnished on or after January 1, 1989.

(b) Adjustment in Medicare Prevailing Charges.—The conference agreement retains the House provision to require the Secretary to review Medicare allowances for purchased services and to reduce payments if they are excessive. In order not to encourage physicians to attempt to circumvent the mark-up limitation by purchasing equipment, performing in-office testing, and charging excessive prices, the Secretary is required to review allowances for similar types of diagnostic services which could be performed in physicians offices and reduce excessive payments. Where reductions are made, a limiting charge applies on unassigned billings of non-participating physicians based on 125 percent of the allowed charge.

The conference agreement provides that this provision shall apply to services rendered on or after January 1, 1989.

The conferees are concerned that there has been misunderstanding about this provision and some manufacturers of ambulatory cardiac monitors have inappropriately attempted to induce physicians to purchase machines to perform in-office testing. The conferees do not intend this provision to favor one type of ambulatory cardiac monitoring over another. Therefore, the conference agreement contains two provisions to address these concerns. The Secretary would be required to review allowances for purchased services and to reduce them if excessive. The review requirement would specifically also cover physician in-office testing. The conferees expect the Secretary to focus such review on high volume Medicare procedures and particularly expect the Secretary to review allowances for all types of ambulatory cardiac monitoring. Second, the conferees choose to request the Office of Technology Assessment to conduct a study concerning the accuracy and effectiveness of currently available methods of long-term ambulatory electrocardiography monitoring.

7. Completion of Forms for Unassigned Claims (Section 9265 of House Bill)

Present law

Physicians and suppliers may bill for their services on either an assigned or unassigned basis. On assigned claims, the physician or supplier submits the claim directly to the Part B carrier. On unassigned claims, the physician or supplier bills the patient who then

submits a claim to the carrier. The physician may submit bills for unassigned claims to the carrier on the beneficiary's behalf.

House bill

Requires that physicians who provide services to Medicare beneficiaries to submit a claim to the Part B carrier for all services, whether or not assignment is accepted. The physician must submit a claim to the carrier no later than when the bill for the service is submitted to the patient. The physician may not impose any charge for completing and submitting the claim forms. If a physician knowingly, willfully and repeatedly violates this requirement, the Secretary may suspend the physician from the program for not more than 5 years, impose civil money penalties, or both.

Effective date.—Applies to services furnished on or after January 1, 1989.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

8. Submission of Claims to Supplemental Insurance Carriers (Section 9266 to House Bill)

Present law

(a) Submission of Claims by Physicians and Suppliers.—Physicians and suppliers may bill for their services on either an assigned or unassigned basis. On assigned claims, the physician or supplier submits the claim directly to the Part B carrier. On receipt of payment for Medicare, the physician or supplier bills the patient, or the patient's supplemental health insurance policy if any, for the deductible and coinsurance amounts. On unassigned claims, the physician or supplier bills the patient who then submits claims for benefits to the carrier and to any supplemental health insurance plan.

(b) Medigap Certification Standards.—Section 1882 specifies standards and criteria for the voluntary certification of Medicare supplemental health insurance policies known as Medigap policies. Under this section, States may impose, either by regulation or legislation, standards on health insurance policies sold as Medicare supplemental policies.

House bill

(a) Submission of Claims by Physicians and Suppliers.—Requires the Secretary to establish procedures whereby a beneficiary receiving a service from a participating physician or supplier may assign his right to benefits under a Medicare supplemental policy to the physician or supplier. In such a case, the carrier processing the claim under Part B is required to transmit to the private entity issuing the supplemental policy such information as the Secretary determines is necessary for the private entity to determine the amounts payable under the policy. The Secretary may arrange for the electronic transmittal of such information for a reasonable fee.

(b) Medigap Certification Standards.—Amends the voluntary Medigap certification standards to require that entities administering such plans accept a notice from Medicare carriers as a claim form. When such notices are received, the plan must notify the physician or supplier, and the beneficiary of the payment determination and make appropriate payments directly to participating physicians or suppliers. The plans must provide each enrollee with a card listing the name, address and policy number. The plans annually must provide the Secretary with a mailing address to be used by carriers.

Effective dates.—(a) applies to contracts with carriers for claims for items and services furnished on or after January 1, 1989, (b) applies to Medicare supplemental policies as of January 1, 1989. If the Secretary identifies a State in which legislation is required to amend the Medigap certification standards and if the legislature is not scheduled to meet in 1988, the effective date is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989.

Senate amendment

No provision.

Conference agreement

(a) Submission of Claims by Physicians and Suppliers.—The conference agreement includes the House provision with an amendment. The Secretary is required to charge supplemental insurance carriers a user fee to cover the costs of the transmittal of claims information to supplemental insurance carriers in either electronic or other form.

(b) Medigap Certification Standards.—The conference agreement includes the House provision.

9. Payments for Durable Medical Equipment. Prosthetic Devices, Orthotics, and Prosthetics (Sections 9263(a)(ii) and 4005 of House Bill: Section 4030 of Senate Amendment).

Present law

(a) Limits on Payment for Lens Implants for Cataract Surgery.—Intraoccular lenses (IOLs) implanted in a physician's office or ambulatory surgical center are reimbursed on a reasonable charge basis. IOLs implanted in hospital outpatient departments must be billed by the hospital and are reimbursed on a reasonable cost basis. Payments for IOLs furnished to hospital inpatients are included in the DRG payment.

(b) General Rules.—Durable medical equipment (DME), prosthetic devices, orthotics and prosthetics are reimbursed under Part B using a methodology similar to that used to pay for physician services—that is, the lesser of the actual charge, the supplier's customary charge, and a prevailing charge. Claims for these services and equipment may be billed on either an assigned or unassigned basis. Suppliers may elect to become participating suppliers and to accept assignment on all claims during participation periods.

Subject to guidelines issued by the Secretary, the Part B carriers determine for certain items whether to make payments on a

rental, lease-purchase or lump-sum purchase basis, depending on the item's cost and expected duration of use. The Secretary is to encourage suppliers to provide equipment on a lease-purchase basis whenever possible.

If the Secretary determines that certain devices or equipment do not vary in quality from one supplier to another, he may establish a "lowest charge level" at the price at which such services and supplies are widely available in a locality. The lowest charge level acts as an additional payment screen, similar to the customary and prevailing charge screens. The Secretary also has issued regulations establishing an "inflation indexed charge" screen. This screen is computed as the lowest of the existing fee screens (customary, prevailing and lowest charge level if applicable) updated by changes in the Consumer Price Index all urban consumers.

In some instances, such as when equipment is provided by a home health agency, the equipment may be reimbursed on the basis of reasonable costs.

Part B payments are made at 80 percent of the reasonable cost or charge levels determined under these rules, adjusted for the annual deductible. The Secretary may waive the 20 percent coinsurance amount for the purchase of used equipment if the purchase price is at least 25 percent less than the price of new equipment.

(c) Payment for Inexpensive DME.—Reimbursement for purchased inexpensive equipment (items costing less than $120), is made in a single payment. If a beneficiary has rented the equipment, rental payments can be on the basis of reasonable rental charges, up to the purchase price. Rental payments may be made beyond the purchase price if the equipment is not available for purchase, if neither the beneficiary nor supplier was aware the item was subject to these guidelines, or for rented respiratory equipment.

(d) Payment for Items Requiring Frequent and Substantial Servicing.—Repairs to a purchased item that are necessary to make the equipment serviceable are covered on a reasonable charge basis. Routine periodic servicing that is generally expected to be performed by the owner is not covered unless it must be performed by authorized technicians. The cost of repairs to rented items are covered under the rental charge.

(e) Payment for Certain Customized Items.—In general, these items are sufficiently unique that carriers do not develop customary and prevailing charge screens for them. Carriers generally make reasonable charge determinations on an item-by-item basis.

(f) Payment for Oxygen and Oxygen Equipment.—When prescribed by a physician for treatment of certain conditions, oxygen therapy services in the home are reimbursed on a reasonable charge basis. Payments for equipment are determined separately from payments for consumable oxygen. Payments for consumable oxygen are based on the amount of oxygen actually supplied. The use of oxygen tanks is reimbursed on the basis of monthly rental charges. Portable oxygen systems, either by themselves or as an adjunct to stationary oxygen systems, are covered if a physician provides a description of the routine activities of exercise that the patient must perform and if such activities are expected to result in

clinical improvement in the patient's condition. Portable oxygen systems are reimbursed on a reasonable charge basis.

(g) Payment for Other Covered Items (other than DME).—This category includes prosthetics and orthotics. Payment for these items is currently made on a reasonable charge basis under Part B.

(h) Payment for Other Items of DME.—Payment for these items is currently made on a reasonable charge basis under Part B. The Secretary may waive the 20 percent coinsurance amount for used equipment costing less than 75 percent of the price of new equipment.

(i) DME Qualifying for Long-term Rental.—No provision.

(j) Lease-purchase Option.—No provision.

(k) Billing Practices.—No provision.

(l) Regional Carriers.—No provision.

(m) Study and Evaluation.—No provision.

(n) Three-month Freeze on Increases in Payments.—No provision.

House bill

(a) Limits on Payments for Lens Implants for Cataract Surgery.—

Section 9263(a)(ii).—Provides that payment for IOLs implanted in a physician's office or an ambulatory surgical center are limited to acquisition cost for the lens (taking into account any discount) plus a handling fee not to exceed 10% of such acquisition cost. The special limit on actual charges specified under Item 2, Section 9362, above, applies to these services.

Section 4005.—No provision.

(b) General Rules.—

Section 9263.—No provision.

Section 4005.—Establishes six categories of DME, prosthetic devices (excluding parenteral and enteral nutritional nutrients, supplies and equipment), orthotics and prosthetics: (1) inexpensive DME (items costing less than $150), (2) items requiring frequent and substantial servicing, (3) certain customized items, (4) oxygen and oxygen equipment, (5) other covered items (not DME), and (6) other DME.

Provides for the calculation of reimbursement amounts applicable to each category. Program payments for services covered under this section (including items furnished by a home health agency under Part A) are equal to 80 percent of the lesser of the supplier's actual charge or the "reimbursement amount," adjusted for deductible amounts as required.

Provides that payments to public home health agencies (or to home health agencies who demonstrate that a significant proportion of their clients are low income) who furnish the item free of charge or for a nominal charge are equal to 80 percent of the fee schedule amount without reference to the actual charge.

Specifies that the reimbursement rules in this provision are the sole basis for paying for these items under both Parts A and B except as these items are provided to hospital inpatients and to residents of skilled nursing facilities whose stays are covered under Part A.

Provides for exceptions to the reimbursement amounts determined under this section to take into account the unique circumstances of items furnished in Alaska, Hawaii, and Puerto Rico.

(c) Payment for Inexpensive DME.—

Section 9263.—No provision.

Section 4005.—Provides that payment for inexpensive DME items whose purchase price does not exceed $150 shall be made on either a rental or purchase basis. If on a rental basis, the total payments may not exceed the amount that would have been paid if the item had been purchased, the amount recoginzed for purposes of reimbursement is the lowest of the actual charge, the specified payment limit or the customary payment limit.

Specifies that the payment limit in 1989 is the 75th percentile of customary charges for the rental or purchase of the item during the twelve month period ending June 30, 1986, increased by the percentage increase in the CPI for the 24 month period ending September 1988. The customary payment limit, calculated for each supplier, is the customary charge for rental or purchase of the item in 1988 increased by the percentage increase in the CPI for the twelve month period ending September 1988. In 1990 and subsequent years, the payment limit and customary payment limit equal the respective amount during the preceding year, increased by the percentage increase in the CPI for the 12 month period ending with September of the preceding year.

(d) Payment for Items Requiring Frequent and Substantial Servicing.—

Section 9263.—No provision.

Section 4005.—Provides that payments for items (such as ventilators, aspirators, IPPB machines, and nebulizers for which there must be frequent and substantial servicing to avoid risk to the patient are made on a monthly basis for the rental of the item. The amount recognized for purposes of reimbursement is the lowest of the actual charge, a specified payment amount and a customary payment limit.

Specifies that the payment amount in 1989 is the 75th percentile of all customary charges for the rental of the item during the twelve month period ending June 30, 1986, increased by the percentage increase in the CPI for the 24 month period ending September 1988. The customary payment limit for each supplier is the customary charge for rental of the item during 1988 increased by the percentage increase in the CPI for the twelve month period ending September 1988. In 1990 and subsequent years, the payment amount and customary payment limits equal the respective amount during the preceding year, increased by the percentage increase in the CPI for the 12 month period ending with September of the preceding year.

(e) Payment for Certain Customized Items.—

Section 9263.—No provision.

Section 4005.—Provides that for items not specifically identified or described in the common coding system established by the Health Care Financing Administration, payments are to be made; (1) for the lump sum purchase of the item based upon the carrier's individual consideration of the item; and (2) for lump sum payments on an as-needed basis for the reasonable and necessary maintenance of the item during the period of medical need. The payment levels are to be based upon carriers' consideration of the individual items.

(f) Payment for Oxygen and Oxygen Equipment—

Section 9263.—No provision.

Section 4005.—Provides that payment for oxygen and oxygen equipment is to be made on the basis of a single monthly payment for all oxygen equipment and supplies. The amount recognized for reimbursement is the lesser of the actual charge or monthly payment amount.

Specifies that the monthly payment amount for oxygen equipment and supplies is a weighted average of local and regional payment amounts (defined below). In 1989, the monthly payment amount is 75 percent of the local payment amount plus 25 percent of the regional amount. In 1990, the monthly payment amount is 50 percent of the local payment amount plus 50 percent of the regional payment amount. After 1990, the monthly payment amount is equal to the regional amount. Separate monthly payment amounts are estimated for (1) oxygen equipment and supplies and (2) portable oxygen equipment. The amount estimated with respect to portable oxygen equipment is used only to determine a monthly add-on to the basic monthly payment (described below) for patients using such equipment.

Provides that the local monthly payment amounts for oxygen equipment and supplies and for portable oxygen equipment are estimated from a base value equal to the total reasonable charges during the 6 months ending December 31, 1986, divided by the total number of months beneficiaries used the equipment and supplies during the 6 month period for which payment was made. The local monthly payment rate in 1989 is equal to 96 percent of the base period value increased by the percentage increase in the CPI during the 24 month period ending September 1988. The local monthly payment rate in 1990 is the 1989 local monthly payment rate increased by the percentage increase in the CPI during the 12 month period ending September 1989.

Provides that the regional monthly payment rates for 1989 and 1990 are the weighted average of the local monthly payment rates for carriers in the region, weighted by relative volume of all claims among carriers. For each subsequent year, the regional monthly payment amounts are the amounts recognized during the preceding year increased by the percentage increase in the CPI for the 12 month period ending September of the preceding year.

Provides that the monthly payment amounts recognized for reimbursement are constrained within certain limits. In 1989, the payment amounts recognized may not exceed 130 percent or be below 80 percent of the national average regional monthly payment amounts. In any subsequent year, the payment amounts recognized may not exceed 125 percent or be below 85 percent of the national average regional payment amounts.

Specifies that if a physician prescribes an oxygen flow rate exceeding 4 liters per minute, the payment amount recognized is increased by 50 percent. If a flow rate of less than 1 liter per minute is prescribed, the payment amount is reduced by 50 percent. Otherwise, payment would not vary by the amount of oxygen used or supplied.

Specifies that if portable oxygen equipment is prescribed, the payment amount recognized is determined according to the local

and regional payment amount rules for portable oxygen equipment described above, and are added onto the payments for stationary oxygen equipment and supplies. However, if a physician prescribes a flow rate of more than 4 liters of oxygen per minute, the payment is increased by the greater of the flow rate adjustment or the monthly amount for portable oxygen equipment but not both.

(g) Payment for Other Covered Items (other than DME).—

Section 9263.—No provision.

Section 4005.—Provides that payment for these items (not defined as DME and not included in any item above) is made in a lump sum for purchase of the item. The amount recognized for purchase is the lesser of the actual charge or a recognized purchase price for each item.

Specifies that the recognized purchase price for each item is a weighted average of local and regional purchase prices (defined below). In 1989, the recognized purchased price is 75 percent of the local purchase price plus 25 percent of the regional purchase price. In 1990, the monthly payment amount is 50 percent local plus 50 percent regional prices. After 1990, the recognized purchase price is equal to the regional prices.

Specifies that the local purchase price for an item is estimated from a base value equal to the 75th percentile of all customary charges for the purchase of the item in the area during the 6 month period ending December 31, 1986. The local purchase price in 1989 is equal to the base period price increased by the percentage increase in the CPI for the 24 month period ending September 1988.

Provides that the regional purchase prices for 1989 and 1990 are the weighted average of the local purchase prices for carriers in the region, weighted by relative volume of all claims amount carriers. For each subsequent year, the regional purchase prices are the amounts recognized during the preceding year increased by the percentage increase in the CPI for the 12 month period ending September of the preceding year.

Provides that the purchase prices recognized for reimbursement are constrained with certain limits. In 1989, the purchase prices recognized may not exceed 130 percent, or be below 80 percent of the national average regional purchase prices. In any subsequent year, the purchase prices recognized may not exceed 125 percent or be below 85 percent of the national average regional purchase prices.

(h) Payment for Other Items of DME.—

Section 9263.—No provision.

Section 4005.—Provides that payment for these items (defined as DME and not included in any item above) is on the basis of monthly rental payments. The monthly rental amount is 10 percent of the recognized purchase price for the item, where the purchase price is determined according to the rules described in (f) above. The amount recognized for payment is the lesser of the actual charge and the rental amount.

Provides that rental payments are made on a monthly basis for up to 15 months. If the period of medical necessity extends for a period beyond 15 months, no further rental payments will be made. During the subsequent 6 months of medical need, no additional

payments are made. During the first month of each succeeding 6 month period of medical need, a service and maintenance payment is made for parts and labor not covered under the supplier's or manufacturer's warranty as determined appropriate by the Secretary. The amount recognized for each such 6 month period is the lower of a reasonable maintenance and service fee established by the carrier or 10 percent of the recognized purchase price.

Specifies that for 1989, the rental amount established may not be more than 115 percent nor less than 85 percent of the prevailing charge established for the rental of the item in January 1987 increased by the percentage increase in the CPI for the 12 month period ending September 1988. For 1990, the rental amount may not be more than the maximum nor less than the minimum amounts established for 1989 increased by the percentage increase in the CPI for the 12 month period ending September 1989.

(i) DME Qualifying for Long-term Rental.—

Section 9263.—No provision.

Section 4005.—No provision.

(j) Lease-purchase Option.—

Section 9263.—No provision.

Section 4005.—No provision.

(k) Billing Practices.—

Section 9263.—No provision.

Section 4005.—Provides that no supplier for a covered item which is provided on a rental basis under this provision may charge an individual for the rental or servicing of the item after rental payments may no longer be made under this title. If a supplier knowingly and willfully violates this rule, the Secretary may sanction the supplier by barring him from the program for a period of up to 5 years, by imposing civil money penalties, or both.

(l) Regional Carriers.—

Section 9263.—No provision.

Section 4005.—Provides that the Secretary may designate one carrier for each region to process claims for items covered under this provision.

(m) Study and Evaluation—

Section 9263.—No provision.

Section 4005.—Requires that the Secretary monitor the impact of this provision on the availability of covered items and evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment. The Secretary must report to Congress, by not later than January 1, 1991, on the impact and evaluation and such report must include recommendations for changes, if any, in the payment methodology.

Prohibits the Secretary from conducting any demonstration project of alternative payment methodologies for items covered under this provision before January 1, 1991.

Requires the Secretary to provide, on written request, the data and information used in determining the payment amounts for items covered under this provision.

(n) Three-month Freeze on Increases in Payment.—

Section 9263.—No provision.

Section 4005.—No provision.

Effective date.—

Section 9263(a)(ii).—Applies to items and services furnished on or after January 1, 1988. With respect to establishment of a reasonable charge limit for IOLs, the special limits shall not apply for the first 12-month period and the reference to the following 12-month period is deemed a reference to 1988.

Section 4005.—Applies to items and services furnished on or after January 1, 1989.

Senate amendment

(a) Limits on Payments for Lens Implants for Cataract Surgery.—No provision.

(b) General Rules.—Establishes three categories of DME: (1) inexpensive items (costing less than $120), (2) DME designated by the Secretary as qualifying for long-term rental payments, and (3) all other DME. There is no provision for prosthetic devices, orthotics or prosthetics.

In general, current policy is maintained for inexpensive DME, except that total lease-purchase or rental payments for an item may not exceed 80 percent of the reasonable charge if bought on a lump-sum purchase basis. Payment for items identified by the Secretary as eligible for long-term rental are made on a reasonable charge basis, except that participating suppliers must provide the item on a lease-purchase basis if requested by a beneficiary.

(c) Payment for Inexpensive DME.—Provides that payment for inexpensive DME items first furnished to a beneficiary in 1988 whose prevailing charge does not exceed $120 shall be made on either a rental, lease purchase or lump-sum basis. The reimbursement amount is determined according to current policy. If provided on a rental or lease purchase basis, total program payments may not exceed 80 percent of the reasonable charge that would apply if the item had been purchased on a lump-sum basis. The Secretary may waive the 20 percent coinsurance amount for the purchase of used equipment whose price is more than 25 percent less than the prevailing charge for the purchase of new equipment.

Provides that the Secretary may adjust the $120 limit that defines that category of inexpensive DME for items first furnished to a beneficiary after 1988.

(d) Payment for Items Requiring Frequent and Substantial Servicing.—No specific provision. DME items requiring frequent and substantial servicing are grouped into one of three categories, inexpensive, eligible for long-term rental, or other, and reimbursed according to (b), (g), or (h) respectively.

(e) Payment for Certain Customized Items.—No specific provision. Customized DME items are grouped into one of three categories, inexpensive, eligible for long-term rental, or other, and reimbursed according to (b), (g), or (h) respectively.

(f) Payment for Oxygen and Oxygen Equipment.—No specific provision. These items and services are grouped into one of three categories, inexpensive, eligible for long-term rental, or other, and reimbursed according to (b), (g), or (H) respectively.

(g) Payment for Other Covered Items (other than DME).—No provision.

(h) Payment for Other Items of DME.—Provides that payment for DME not defined as inexpensive or designated by the Secretary as

eligible for long-term rental is made on either a lump-sum or lease-purchase basis. Purchase on a lump-sum basis is permitted only if the expected duration of medical need for the equipment warrants a presumption that purchase would be less costly than purchase on a lease-purchase basis. If payment is made on a lease-purchase basis and on an assigned basis, the total payment (including any coinsurance) may not exceed an amount equal to the reasonable charge for purchase on a lump-sum basis plus a fair three-month rental charge. Title to the equipment passes to the beneficiary when the maximum payment amount is reached. If payment is not made on the basis of assignment, total program payments may not exceed 80 percent of the reasonable charge on a lump-sum purchase basis, except as provided for the purchase of used equipment.

(i) DME Qualifying for Long-term Rental.—Provides that the Secretary may designate items of DME as eligible for long-term rental.

(j) Lease-purchase Option—Provides that if a participating supplier offers DME equipment other than inexpensive equipment for either purchase or rental, the supplier must offer to provide the equipment on a lease-purchase basis at the option of the beneficiary.

(k) Billing Practices.—Provides that if durable medical equipment is rented on the basis of assignment, the beneficiary is entitled to use the equipment as long as the item is required without any additional charge beyond the 20 percent coinsurance.

(l) Regional Carriers.—No provision.

(m) Study and Evaluation.—No provision.

(n) Three-month Freeze on Increases in Payments.—Requires that the payment screens used to determine the payment level for DME and for determining payments for other nonphysician services paid on a reasonable charge basis under Part B are frozen through March 31, 1988 at the levels in effect on December 31, 1987. Through January 15, 1988, the benefit payments would also reflect the sequestration reductions as required under this Act. Adjustments in payments that would have become effective on January 1, 1988 shall become effective on April 1, 1988. The adjustment in the inflation index charge for DME that becomes effective on January 1, 1989 shall be 75 percent for the adjustment that would otherwise he made on that date. Participation agreements with suppliers for 1987 shall continue in effect through March 31, 1988, unless the participating supplier requests that the agreement be terminated. The effective period for participation agreements in 1988 will be the nine month period beginning on April 1, 1988.

Effective date—(n) Applies on enactment; all other provisions apply to equipment first furnished an individual on or after April 1, 1988.

Conference agreement

(a) Limits Payments for Lens Implants for Cataract Surgery.—The conference agreement includes the House bill with an amendment limiting the handling fee in physicians' offices to 5 percent of the acquisition cost. The agreement provides that, with respect to IOL's furnished in ambulatory surgical centers, payment is incorporated into the facility fee in an amount which is reasonable and related to

the acquisition cost. For this purpose, the Secretary may establish categories of IOL's based on differences in type and cost.

(b) General Rules.—The conference agreement follows the House bill as included in Section 4005 with amendments as described in the following sections. That is, a fee-schedule is established for each of 6 categories of services. The conference agreement provides that the fee-schedules will be used to determine payments for items and services provided on or after January 1, 1989.

(c) Payment for Inexpensive DME.—The conference agreement includes the House bill with amendments. The agreement provides that payment for inexpensive DME (items whose purchase price does not exceed $150 or that the Secretary determines are acquired by purchase at least 75 percent of the time) shall be made on either a rental or purchase basis. If on a rental basis, the total payments may not exceed the amount that would have been paid if the item had been purchased; the amount recognized for purposes of reimbursement is the lower of the actual charge and the specified payment amount.

The agreement specifies that the payment amount in 1989 is the average allowed charge for the 12 months ending June 30, 1987, for rental or purchase, increased by the percentage increase in consumer price index for the 6 months ending December 31, 1987. In subsequent years, the payment amount is increased by the increase in the consumer price index for the 12 month period ending in June.

(d) Payment for Items Requiring Frequent and Substantial Servicing.—The conference agreement includes the House bill with amendments. The agreement provides that payments for items (such as ventilators, aspirators, IPPB machines, and nebulizers) for which there must be frequent and substantial servicing to avoid risk to the patient are made on a monthly basis for the rental of the item. The amount recognized for purposes of reimbursement is the lower of the actual charge and the specified payment amount.

The agreement specifies that the payment amount in 1989 is the average allowed charge for rental of the item during the 12 month period ending June 30, 1987, increased by the percentage increase in the CPI for the 6 month period ending December 31, 1987. In subsequent years, the amount is increased by the percentage increase in the CPI for the 12 month period ending in June.

(e) Payment for Certain Customized Items.—The conference agreement includes the House bill with amendments. The agreement provides that payment for items that are uniquely constructed to meet the specific needs of an individual patient are to be made: (1) for the lump sum purchase of the item based upon the carrier's individual consideration of the item; and (2) for lump sum payments on an as-needed basis for the reasonable and necessary maintenance of the item not covered by the supplier's or manufacturer's warranty during the period of medical need. The payment levels are to be based upon carriers' consideration of the individual items.

(f) Payment for Oxygen and Oxygen Equipment.—The conference agreement includes the House bill with amendments. The agreement provides that payment for oxygen and oxygen equipment is to be made on the basis of a single monthly payment for all oxygen equipment and supplies. The amount recognized for reimbursement

is the lesser of the actual charge or a specified monthly payment amount.

The agreement provides that the monthly payment amount for oxygen equipment and supplies is a weighted average of local and regional payment amounts (defined below). In 1989 and 1990, the monthly payment amount is 100 percent of the local average monthly rate. In 1991, the monthly payment amount is 75 percent of the local payment amount plus 25 percent of the regional amount. In 1992, the monthly payment amount is 50 percent of the local payment amount plus 50 percent of the regional payment amount. After 1992, the monthly payment amount is equal to the regional amount. Separate monthly amounts are estimated for (1) oxygen equipment and supplies and (2) portable oxygen equipment. The amount estimated with respect to portable oxygen equipment is used only to determine a monthly add-on to the basic monthly payment (described below) for patients using such equipment.

The conference agreement provides that the local monthly payment amounts for oxygen equipment and supplies and for portable oxygen equipment are estimated from base value equal to the total reasonable charges during 12 months ending December 31, 1986, divided by the total number of months beneficiaries used the equipment and supplies during the 12 month period for which payment was made. The local monthly payment rate in 1989 is equal to 95 percent of the base period value increased by the percentage increase in the CPI during the 12 month period ending December 1987. The local monthly payment rate in 1990 and 1991 is the local monthly payment rate for the previous year increased by the percentage increase in the CPI during the 12 month period ending in June.

The agreement provides that the regional monthly payment rates for 1990, 1991, and 1992 are the weighted average of the local monthly payment rates for carriers. For each subsequent year, the regional monthly payment amounts are the amounts recognized during the preceding year increased by the percentage increase in the CPI for the 12-month period ending June of the preceding year.

In 1991, the payment amounts recognized may not exceed 130 percent or be below 80 percent of the national average monthly payment amounts. In any subsequent year, the payment amounts recognized may not exceed 125 percent or be below 85 percent of the national average regional payment amounts.

(g) Payment for Other Covered Items (other than DME).—The conference agreement includes the House bill with amendments. The agreement provides that payment for these items (not defined as DME and not included in any item above) is made in a lump sum for purchase of the item. The amount recognized for purchase is the lesser of the actual charge or a recognized purchase price for each item.

The agreement provides that the recognized purchase price for each item is a weighted average of local and regional purchase prices (defined below). In 1989 and 1990, the recognized purchase price is 100 percent of the local price. In 1991, the recognized purchase price is 75 percent of the local purchase plus 25 percent of the regional purchase price. In 1992, the monthly payment amount is 50 percent local plus 50 percent regional prices. After 1992, the

recognized purchase price is equal to the regional prices. The local purchase price for an item is estimated from a base value equal to the average allowable charge for the purchase of the item in the area during the 12-month period ending June 30, 1987. The local price in 1989 is the average price for the purchase of the item increase by the CPI for the 6 months ending December 1987. In 1990, 1991 and 1992, the local purchase price is equal to the price during the preceding year increased by the percentage increase in the CPI for the 12 month period ending June.

The regional purchase prices for 1991 and 1992 are the weighted average of the local purchase prices for carriers in the region, weighted by relative volume of all claims among carriers. For each subsequent year, the regional purchase prices are the amounts recognized during the preceding year increased by the percentage increase in the CPI for the 12-month period ending June of the preceding year. The purchase prices recognized may not exceed 130 percent, or be below 80 percent of the national average purchase prices. In any subsequent year, the purchase prices recognized may not exceed 125 percent or be below 85 percent of the national average purchase prices.

(h) Payment for Other Items of DMF.—The conference agreement includes the House bill with amendments. The agreement provides that payment for these items (defined as DME and not included in any item above) is on the basis of monthly rental payments. The monthly rental amount is 10 percent of the recognized purchase price for the item, where the purchase price is determined in a manner similar to the rules described in (g) above using actual submitted charges for the purchase price of these items. The amount recognized for payment is the lesser of the actual charge and the rental amount. The agreement specifies that for 1989, the rental amount established may not be more that 115 percent nor less than 85 percent of the prevailing charge established for the rental of the item in January 1987 increase by the percentage increase in the CPI for the 6 month period ending December 1987. For 1990, the rental amount may not be more than the maximum nor less than the minimum amounts established for 1989 increased by the percentage increase in the CPI for the 12-month period ending June 1989.

(i) DME Qualifying for Long-term Rental.—The conference agreement does not include the Senate amendment.

(j) Lease-purchase Option.—The conference agreement does not include the Senate amendment.

(k) Billing practices.—The conference agreement includes the House bill with amendments. The Secretary is authorized to require, for specified covered items, that payments may only be made if a physician has ordered the item or service prior to delivery. In order to permit a physician to establish a need for TENS, (purchase codes E0720 and EO729), the Secretary may provide for the rental of such item for not more than 2 months. If the item is then determined to be appropriate for the patient, payment would be made in accordance with the rules governing inexpensive equipment.

(1) Regional carriers.—The conference agreement includes the House bill.

(m) Study and Evaluation.—The conference agreement includes the House bill with amendments. The Secretary is prohibited from conducting any demonstrations of alternative methods of paying for DME items and services prior to January 1, 1991. The GAO is to conduct a study, due January 1, 1991, of DME payment levels and to make recommendations on the transition to regional or national rates.

(n) Three-months Freeze on Increases in Payments.—The conference agreement includes the Senate amendment with modifications. The payment screens used to determine the payment level for DME and for determining payments for other nonphysician services paid on a reasonable charge basis under Part B are frozen through December 1988 at the levels in effect on December 31, 1987. Through March 31, 1988, the benefit payments would also reflect the sequestration reduction as provided under Section 4061 of the Act. The conferees note that the 1-year freeze applies to all payment screents in effect in December 1987.

10. Clinical Diagnostic Laboratory Tests (Section 4033 of Senate amendment)

Present law

(a) Payments.—Payment for clinical laboratory services are made on the basis of two fee schedules. One fee schedule is established for laboratory tests performed either in a physician's office or by an independent laboratory (including a hospital laboratory furnishing serivces to persons who are not patients of the hospital). A second schedule is established for hospital laboratory services provided by a qualified hospital laboratory to a hospital's outpatients.

For the period beginning July 1, 1984, the rates under both schedules were established on a regional, statewide, or carrier service area basis. The first fee schedule was set at 60 percent of the prevailing charge levels established for the fee screen year beginning July 1, 1984. The second fee schedule was set at 62 percent of the prevailing charge levels established for the fee screen year beginning July 1, 1984. The fee schedules are adjusted annually to reflect urban consumers. Beginning July 1, 1986, the Secretary is required to establish payment ceilings for each test to be applied nationwide. Form July 1, 1986, through December 31, 1987, the ceiling is set at 115 percent of the median of all the fee schedules established for a particular test in a particular laboratory setting. Beginning January 1, 1988, until such time as a fee schedule for a test has been established on a nationwide basis, the ceiling is set at 110 percent of the median of all the fee schedules established for a particular test in a particular laboratory setting. Beginning January 1, 1990, the fee schedule for tests independent laboratory is to be established on a national basis.

(b) Intermediate Sanctions.—Medicare law requires that independ laboratories, situated in a State which a State or local law provides for licensing, to be licensed pursuant to such law or be approved by the agency of the State or locality responsible for such licensure as meeting the standards established for licensing. Further they much meet such other conditions as the Secretary finds necessary to assure the health and safety of individuals with respect to whom the tests are performed.

House bill

(a) Payments.—No provision.
(b) Intermedate Sanctions.—No provison.

Senate amendment

(a) Payments.—Provides for rebasing the fee schedules, effective January 1, 1988 (sic). The base percentage is reduced to 55% of the prevailing charge levels for independent laboratories and 57% for qualified hospital laboratories.

Provides that the payment ceiling for a test for the period after December 31, 1987 and before January 1, 1989 is equal to 100 % of the median of all fee schedules established for that test for that setting. After December 31, 1988, the level is equal to 97% of the median of all fee schedules established for that test for that setting.

(b) Intermediate Sanctions.—Authorizes intermediate sanctions (in lieu of immediately cancelling the certification of a provider or clinical laboratory) in the case of any provider or clincial laboratory certified for participation under Medicare which no longer substantially meets the conditions of participation specified with respect to the provision of clinical laboratory services under Part B.

Requires the Secretary to develop and implement (1) a range of intermediate sanctions to apply to such providers or certified clinical laboratories, and (2) appropriate appeals procedures relating to imposition of sanctions. The intermediate sanctions must include (1) directed plans of correction, (2) civil fines and penalties, (3) payment for the costs of onsite monitoring by an agency responsible for conducting certification surveys; and (4) suspension of part or all of the payments to which a provider or certified clinical laboratory would otherwise be entitled under Medicare for clincial diagnostic laboratory tests provided on or after the date the Secretary determines intermediate sanctions should be imposed.

Specifies that the new sanctions are in addition to sanctions otherwise available under State or Federal law.

Requires the Secretary to develop and implement specific procedures with respect to when and how each of the intermediate sanctions is to be applied, the amount of any fines and the severity of the penalties. The procedures are to be designed so as to minimize the time between identification of violations and imposition of these sanctions incrementally more severe fines for repeated of uncorrected deficiences.

Effective date.—(a) January 1, 1988 (b) January 1, 1990.

Conference agreement

(a) Payments.—The conference agreement includes the Senate amendments with modifications. The differential between the fee schedules for hospital outpatient laboratories and other laboratories is eliminated except for sole community hospitals.

The agreement provides for rebasing the fee schedules for automated tests (HCPCS codes 80002–80019 and for tests (with the exception of cytopathology) that were subject to the lowest charge provision prior to completion of the clinical lab fee schedule in 1984.

The rebasing is accomplished by reducing fee schedules for these tests by 8.3 percent for 1988.

The agreement provides that the payment ceiling for a test performed for the nine-month period beginning April 1, 1988, is equal to 100 percent of the median of all fee schedules established for that test for that setting. Beginning January 1, 1989, the level is equal to 100 percent of the median of all fee schedules established for that test for that setting. The agreement provides for no CPI update for 4/1/86 and there is catch-up.

The conference agreement provides for a GAO study of the level of fee schedules established under this provision to determine, based on the costs of revenues received for such services, the appropriateness of such schedules. GAO is required to report the results to Congress by January 1, 1990. Suppliers would be required to provide reasonable access to records containing cost and revenue data. Failure to provide access would result in sanctions.

The conference agreement provides that high-volume physician office laboratories performing over 5,000 tests a year (including medicare and non-medicare) will be treated as independent laboratories; that is, the same Medicare conditions for coverage that apply to independent laboratories will apply in these settings. The intent of this provision is to extend regulation of physician office laboratories beyond those doing referral work, to those performing a high volume of tests on their own patients. The conferees intend, through this requirement, to hold physician office laboratories doing a large volume of laboratory testing to the same standards that apply to independent laboratories. The requirement of state certification would be effective on January 1, 1990.

(b) Intermediate Sanctions.—The conference agreement includes the Senate amendment.

11. Elimination of Return on Equity for Outpatient Hospital Services (Section 9267 of House Bill; Section 4025 of Senate Amendment).

Present law

The Secretary is authorized to issue regulations providing for payment of a return on equity capital to proprietary providers for services reimbursed on a reasonable cost basis. If the Secretary elects to provide for a return on equity, the payment must be equal to the average rates of increase on obligations issued for purchase by the Part A Trust Fund. Providers reimbursed on a reasonable cost basis include hospitals and hospital outpatient departments.

House bill

Eliminates the Secretary's authority to pay return on equity with respect to the costs of hospital outpatient departments.

Effective date.—Applies to cost reporting periods beginning on or after October 1, 1987.

Senate amendment

Provides that regulations providing for payment of a return on equity capital may not include specific recognition of return on equity capital with respect to hospital outpatient departments.

Effective date.—January 1, 1988.

Conference agreement

The conference agreement includes the Senate amendment.

12. Payments to Hospital Outpatient Departments for Radiology (section 4022 of Senate Amendment.

Present law

Hospital outpatient departments are paid the lesser of their reasonable costs or charges for radiology services.

House bill

No provision.

Senate amendment

Provides for a limit to the aggregate payment for the non-capital costs of outpatient hospital radiology services (including diagnostic and therapeutic radiology, nuclear medicare and CAT scan procedures). The limit is based on a blended amount of the non-capital related costs and the prevailing charges that would apply if the services had been performed in a physician's office in the same locality.

The term "cost proportion" is defined as 65 percent for cost reporting periods beginning in FY 1989 and 50 percent for subsequent years. The term "charge proportion" is defined as 35 percent for cost reporting periods beginning in FY 1989 and 50 percent in subsequent years.

The "blend amount" for radiology services is defined as the sum of: (1) the hospital's reasonable costs of providing the radiologic services, excluding capital related costs, times the cost proportion; and (2) 62 percent of 80 percent of the prevailing charges for participating physicians for the same services, times the charge proportion.

The aggregate reimbursement limit is the amount for the capital costs related to the radiologic services plus the lesser of the hospital's reasonable costs (excluding amounts for capital) and the blend amount.

Effective date.—Applies to cost reporting periods beginning on or after October 1, 1988.

Conference agreement

The conference agreement includes the Senate amendment with amendments. Radiology services included under the limit also include magnetic resonance imaging services and diagnostic ultrasound and other imaging procedures. In addition, the limit includes both non-capital and capital costs. Effective October 1, 1989, payment for other diagnostic procedures provided in hospital outpatient departments are included under the same aggregate limit. The limit for these additional procedures would be based on 42 percent of the prevailing charge or on other appropriate percentage(s) if determined by the Secretary to be appropriate or by the carriers (acting pursuant to guidelines issued by the Secretary). Such alternative percentage(s) would be based on the technical component for the service as a percent of the total charge for the service. The conference agreement provides that this provision is effective for radi-

ology services rendered on or after October 1, 1988 and other diagnostic procedures for services rendered on or after October 1, 1989.

13. Payment for Ambulatory Surgery at Eye and Ear Specialty Hospitals (Section 4032 of Senate Amendment).

Present law

OBRA provided for a modification in payments to hospitals outpatient departments (OPDs) for ambulatory surgical procedures when such procedures have been approved for ambulatory surgical centers (ASCs). Payment for such OPD services is the lesser of the OPD's costs or charges (in the aggregate) net of cost sharing, or a blend of hospital costs and ASC rates. The blend is 75/25 for cost reporting periods beginning in FY88 and 50/50 thereafter. The law does not make any distinctions based on hospital specialties.

House bill

No provision.

Senate amendment

(a) Payment Rates.—Modifies the OBRA provision in the case of a hospital that: (1) specializes in eye or ear surgical procedures (as determined by the Secretary); (2) receives more than 30% of its total revenues from outpatient procedures; and (3) was an eye and ear specialty hospital or an eye specialty hospital on October 1, 1987. For a hospital meeting these requirements and making applications to the Secretary, the 75/25 blend of the hospital's reasonable cost and the ASC rate is retained for cost reporting periods beginning in fiscal years after 1988.

(b) Study on Payment Rates.—Requires the Secretary to conduct a study on modifying the payment amounts specified under the OBRA provision with respect to hospitals that specialize in specific surgical procedures. The Secretary is required to report the results to Congress within one year of enactment.

Effective date.—Effective as if included in OBRA.

Conference agreement

(a) Payment Rates.—The conference agreement includes the Senate amendment with amendments. The 75/25 blend of a hospital's reasonable costs and the ASC rate applies only to cost reporting periods beginning in fiscal years 1989 and 1990, reverting to a 50/50 blend for cost reporting periods beginning after October 1, 1990.

(b) Study on Payment Rates.—The conference agreement includes the Senate amendment with modifications. In conducting the study required by OBRA (86) to develop a prospective payment system for outpatient ambulatory surgery, the Secretary is required to consider whether a payment differential for specialty hospitals is appropriate. The Secretary shall solicit recommendations from the Prospective Payment Assessment Commission on the Prospective payment system for ambulatory surgery and on the model reimbursement system for non-surgical outpatient services. Such recommendations shall be included in the reports to Congress on these systems.

14. Medicare Payment for Therapeutic Shoes for Individuals With Severe Diabetic Foot Disease (Sections 9268 and 4025 of House Bill; Section 4029 of Senate Amendment)

Present law

Orthopedic shoes and other supportive devices for the feet are specifically excluded from coverage from Medicare.

House bill

(a) Coverage.—

Section 9268.—Provides that custom molded shoes, extra depth shoes with or without inserts and inserts for such shoes, prescribed by a podiatrist or other qualified physician and provided by a podiatrist or other qualified individual (as defined by the Secretary), are a covered service for diabetic individuals who are certified by a physician as being at risk for certain foot diseases. The shoes would not be covered if provided by the physician that certified the need for the shoes unless the Secretary finds that the physician is the only qualified individual in the area.

Section 4025.—Similar provision except that extra depth shoes without inserts and inserts by themselves are not specifically cited as a covered benefit.

(b) Limitation on Benefit.—

Section 9268.—Provides that the benefit is limited to no more than one pair of shoes or inserts per individual per calendar year and that payment for the shoes includes any expense for the fitting of such shoes. In the first year, payment is limited to $300 for custom molded shoes, $100 for extra-depth shoes and $50 for inserts. The Secretary may establish lower limits for shoes if shoes and inserts are readily available at lower prices. In subsequent years, the payment limits are to be increased the same percentage as the Secretary provides for durable medical equipment, rounded to the nearest dollar.

Section 4025.—Similar provision except that the annual limit to no more than one pair of shoes does not apply to inserts.

(c) Contingent Effective Date; Demonstration Project.—

Section 9268.—No provision.

Section 4025.—No provision.

Effective date.—

Section 9268.—Applies to shoes and inserts furnished on or after January 1, 1988.

Section 4025.—Applies to shoes furnished on or after January 1, 1988.

Senate amendment

(a) Coverage.—Identical provision to Section 4025.

(b) Limitation on Benefit.—Identical provision to Section 4025.

(c) Contingent Effective Date; Demonstration Project.—Provides that when and if coverage for therapeutic shoes becomes effective is to be based on the results of a demonstration project. The Secretary is required to conduct a demonstration project to test the cost-effectiveness of furnishing therapeutic shoes under Medicare to a sample of beneficiaries. The project shall begin on October 1, 1988 and continue for a period of 24 months. Not later than October 1,

1990, the Secretary shall report to Congress on the results of the project. If the Secretary finds the coverage to be cost-effective, the demonstration project would be discontinued, and the provisions providing coverage for therapeutic shoes would become effective on November 1, 1990. If the Secretary cannot make such a finding, the demonstration project would continue for an additional 24 months. The Secretary is required to submit a final report to Congress on the results of the study not later than April 1, 1993. The provisions providing coverage of therapeutic shoes would become effective on the first day of the first month after the final report is submitted unless the Secretary finds that such coverage is not cost-effective, in which case coverage would not be effective.

Effective date.—(c) is effective on enactment. Effective date of (a) and (b) is contingent on the outcome of demonstration project described in (c).

Conference agreement

(a) Coverage.—The conference agreement includes the Senate amendment.

(b) Limitation on Benefit.—The conference agreement includes the Senate amendment.

(c) Contingent Effective Date; Demonstration Project.—The conference agreement includes the Senate amendment.

15. Part B Premium (Section 4023 of Senate Amendment).

Present law

Under the original Medicare law, beneficiary premiums paid for 50% of the cost of Part B with the remaining 50% financed by Federal general revenues. However, between 1974 and 1983, the law limited the percentage increase in Part B premiums to the percentage increase in Social Security cash benefits payments.

TEFRA (as amended by the Social Security Amendments of 1983) specified that enrollee premiums in 1984 and 1985 would be allowed to increase to amounts necessary to produce equal to 25% of program costs for elderly enrollees. If there is cost-of-living (COLA) increase, the monthly premium would not be increased in that year. If the amount of the premium increase is greater than the Social Security COLA, the premium increase is to be reduced so as to avoid a reduction in the individual's social security check. Subsequent legislation extended these provisions through 1988. Beginning in 1989, the premium calculation reverts to the earlier method.

House bill

No provision.

Senate amendment

Extends for one year, through calendar year 1989, the current 25% payment provision, the provision specifying that no increase in the premium will occur if there is no social security COLA, and the provision holding beneficiaries harmless from a reduction in their social security checks as a result of the premium increase.

Effective date.—Enactment.

Conference agreement

The conference agreement includes the Senate amendment.

It is the expectation of the conferees that the monthly increase in the Part B premium on January 1, 1989 due to the extension of the 25% rule through fiscal year 1989 will be no more than the $2.00 a month projected by the Congressional Budget Office in the estimate submitted to the Congress on December 21, 1987.

The Committees on Ways and Means, Energy and Commerce and Finance will closely monitor payments to physicians and other Part B providers that affect the Part B premium.

Furthermore, it is the intention of the conferees that the Health Care Financing Administration submit to Congress the analysis used to set the Part B premium for January 1, 1989 in time for Congress to act prior to any increase in the premium that would take effect on January 1, 1989.

16. Increase in Part B Deductible (Section 4034 of Senate amendments).

Present law

Enrollees in the Part B program must pay the first $75 of covered expenses (known as the deductible) each year before any benefits are paid. The amount of the deductible is fixed by law. When the program was first enacted, it was set at $50. It was subsequently increased to $60 in 1972 and $75 in 1982.

House bill

No provision.

Senate amendment

Increase Part B deductible to $85.

Effective Date.—Applies with respect to calendar years after 1988.

Conference agreement

The conference agreement does not include the Part B deductible. In lieu of this provision, the conferees agreed to the re-imposition of beneficiary cost sharing for services provided by physicians in ambulatory surgical centers, effective April 1, 1988.

17. Providing Community Nursing and Ambulatory Care on a Prepaid Capitated Basis to Medicare Beneficiaries (Sections 9269 and 4071 of House bill; Section 4085 of the Senate Amendment).

Present law

No provision.

House bill

(a) Demonstration Projects.—

Section 9269.—Requires the Secretary to conduct demonstrations, in at least 4 sites, of a prepaid community nursing system, which would furnish home health care and other part B Medicare services as determined by the Secretary to enrollees. Services could not include outpatient hospital, physician, lab or x-ray. Requires that the community nursing organization follows the orders of attend-

ing physicians as they relate to community nursing services in accordance with standards established by the Secretary. The organization would be reimbursed on a prepaid capitated basis similar to that used for HMOs and CMPs.

Provides that the projects could involve financial risk-sharing or other assurances that the organization will minimize substitution of other Medicare services for the services for which the organization was responsible. The Secretary is authorized to terminate any project failing to meet any requirements, including requirements related to financial responsibility of institutional care.

Provides that expenditures for the demonstration projects are to be made, in appropriate parts, from the part A and part B trust funds. The Secretary is authorized to establish necessary payment conditions and terms, and to ensure that aggregate payments for the demonstrations may not exceed the aggregate payments which would have been made in the absence of the demonstrations.

Authorizes the Secretary to waive Medicare requirements to the extent and for the period necessary to conduct the demonstrations. The Secretary is required to report to the Congress within 4 days after enactment on the demonstrations and on the advantages and disadvantages of Medicare prepared community nursing.

Section 4071.—No provision.

(b) Contracts with Community Nursing and Ambulatory Care Organizations (CNACOs).—

Section 9269.—No provision.

Section 4071.—Provides that any Medicare beneficiary enrolled in both part A and part B, except a beneficiary who has end-stage renal disease or who is already enrolled in another prepaid program, may enroll in a CNACO in his or her area which has entered into a contract with the Secretary. Services provided by a CNACO include part time home nursing and home health aid services; physical, occupational and speech therapy; social services; durable medical equipment, prosthetics, and other medical supplies; ambulance services; and services of rural health clinics and clinical psychologists.

(1) Provides that to qualify as a CNACO, an entity must be primarily engaged in the direct provision of community nursing and ambulatory care, provide or arrange for such care through qualified personnel, supervised by a registered nurse and governed by policies developed by a registered professional nurse. The CNACO must maintain clinical records on all patients, assure timely referrals to and consultants with other providers, and comply with applicable State and local laws. It must be compensated for services to enrollees on a capitated basis, accept full financial risk for the services, and provide satisfactory assurances against the risk of insolvency.

(2) Provides that the CNACO must provide all covered services generally available to beneficiaries in its area, along with additional services enrollees elect to have covered. It must use Medicare-qualified providers and must make the services available and accessible with reasonable promptness and in a manner which ensures continuity of care. It must meet the same requirements as HMOs/CMPs relating to marketing, enrollment, disenrollment and grievance procedures. It must have a quality assurance program stress-

ing health outcomes and providing for professional review of health care processes.

(3) Provides for payment to a CNACO following the same principles as payment to HMOs/CMPs. The Secretary is to establish per capita payment rates for different classes of enrollees, categorized by age, disability status, and other factors. The rate for each class is set equal to 95 percent of the adjusted average per capita cost (AAPCC). The AAPCC is an estimate of what Medicare would have paid for the scope of services provided by the CNACO if enrollees had obtained the services outside the CNACO. The Secretary may not enter into a contract with a CNACO unless he determines that overall costs will not exceed what would have been spent in the absence of the contract. Provides that monthly per capita payment is issued in advance, subject to later adjustment. No other Medicare payment is made to the CNACO, any other provider, or the beneficiary for the services the CNACO covers. Payments to a CNACO are to be drawn from the Medicare part A and part B trust funds in proportions the Secretary deems equitable, taking into account the proportion of CNACO benefits attributable to the two parts.

(4) Provides that the CNACO may charge enrollees a monthly premium and/or deductibles, coinsurance, or copayments. The actuarial value of these charges may not exceed the projected average value of the Medicare coinsurance and deductibles the enrollees would have paid for the same scope of services outside the CNACO. If the CNACO offers benefits beyond those ordinarily covered by Medicare, election of coverage of the additional benefits is optional for the beneficiary. The CNACO must disclose any additional premiums or other cost-sharing amounts related to these benefits. The total additional charges cannot exceed what the CNACO would have charged comparable non-Medicare enrollees for the same set of services.

(5) Requires the Secretary to establish for each CNACO an adjusted community rate (ACR), representing an estimate of the rate the CNACO would have charged a non-Medicare enrollee for the scope of services covered by Medicare (net of deductibles and co-insurance). If the ACR is lower than the average Medicare payment rate for the CNACO, the CNACO must furnish additional benefits or reduced enrollee cost-sharing equal in value to the difference between the ACR and the average payment, or the CNACO must accept a reduction in payment rates until the ACR and average payment rate are equal. A portion of any difference between the ACR and the average payment rate may instead be deposited in a benefit stabilization fund under the provisions currently in effect for HMOs/CMPs. The Secretary may determine the average payment rate on the basis of the experience of other CNACOs if there is insufficient experience to establish an average for a particular CNACO.

(6) Requires the CNACO to make prompt payment of claims by providers of services to enrollees when those providers are not subcontractors of the CNACO. If the CNACO fails to comply, the Secretary may, after notice and an opportunity for a hearing, issue payments directly to providers and reduce the CNACO's payments accordingly. Provides that the CNACO is a secondary payer when a

workers' compensation plan or automobile or liability policy is responsible for providing benefits to an enrollee.

(7) Provides that contracts with CNACOs shall be subject to certain additional requirements presently in effect for HMOs/CMPs, including provisions relating to term of the contract, sanctions and penalties, the Secretary's right to inspect and to receive financial disclosures, and the review of quality of care by a PRO or other quality review organization.

Effective date.—

Section 9269.—Enactment.

Section 4071.—Applies to contracts entered into on or after January 1, 1988.

Senate amendment

(a) Demonstration Projects.—

Requires the Secretary to enter into agreements with at least 4 eligible organizations to conduct demonstrations of community nursing and ambulatory care services furnished on a prepaid, capitated basis. Standards for eligible organizations and operating rules for the demonstrations are comparable to those provided in section 4071 of the House bill, and are discussed below. Projects would begin no later than July 1, 1989, and would be conducted for a period of three years. The Secretary is required to report to Congress on the results of the demonstrations no later than January 1, 1992.

(b) Contracts with Community Nursing and Ambulatory Care Organizations (CNACOs).—Similar provision. Beneficiaries already enrolled in another prepaid organization are not excluded from membership. Added to the list of covered benefits are services comparable to those furnished under Medicaid home and community based waiver programs, such as case management, personal care, day care, respite care, and habilitation services, to the extent the Secretary finds such services appropriate to prevent the need for institutionalization.

(1) Similar provision. Adds an additional requirement that the site where the organization provides nursing and ambulatory care be in a health manpower shortage area as designated by the Secretary.

(2) Similar provision. Does not incorporate HMO/CMP requirements on marketing, enrollment, and disenrollment, but provides that the organization must have an annual open enrollment period. The duration of the period and other requirements relating to enrollment and disenrollment would be specific in the agreement with the organization.

(3) Similar provision. Except provides that rates for at least one of the demonstration projects would be established by the Secretary in consultation with providers, health policy experts, and consumer groups.

(4) Identical provision.

(5) Similar provision. Does not include the provision permitting the Secretary to use the experience of other organizations in projecting the average Medicare rate when there is insufficient experience for a particular organization.

(6) Identical provision.

(7)No provision.
Effective Date.—Enactment.

Conference agreement

(a) Demonstration Projects.—The conference agreement includes the Senate amendment, with modifications. The projects would be required to have protocols and procedures for timely referrals to attending physicians and other health professionals. The Secretary is authorized to require financial risk-sharing or other assurances that the projects will minimize substitution of other Medicare services for the services for which the projects are responsible, and to terminate a project failing to meet any requirements, including those relating to financial responsibility or use of institutional services.

(b) Contracts with Community Nursing and Ambulatory Care Organizations (CNACOs).—The conference agreement includes the Senate amendment.

18. Maximum Rate of Payment Per Visit for Independent Rural Health Clinics (Section 4011 of House Bill; Section 4026 of Senate Amendment).

Present law

(a) Payment Limit.—Independent rural health clinics, defined as clinics that are not part of a hospital, nursing home or home health agency, are reimbursed on the basis of an all-inclusive rate per visit. The all-inclusive rate includes all services provided by the clinic. The all-inclusive rate per visit for each facility is determined on the basis of the reasonable costs of providing the service. In determining the reasonable costs, the Secretary has established limits on the total costs per visit that may be considered reasonable. This maximum limit was set at $32.10 as of January 1, 1983.

The Medicare Economic Index (MEI) is an index of changes in physician practice costs. Unless specifically overridden by Congress, this index is the basis for limiting annual increases in physicians' prevailing charge screens under Medicare.

(b) Report to Congress.—No provision.

House bill

(a) Payment Limit.—Requires the Secretary to establish the maximum limit at $46 per visit in 1988. In subsequent years, this limit is to be increased by the percentage increase in the MEI, without reference to any legislatively determined percentage increase in the MEI that may be specified for the purpose of limiting increases in physician payments.

(b) Report to Congress.—Requires the Secretary to report to Congress by March 1, 1989 on the adequacy of the payment amounts for the services of independent rural health clinics provided under Medicare.

Effective date.—Enactment.

Senate amendment

(a) Payment Limits.—Provides that if the Secretary does not provide for an update to the current payment limit for 1988 within 120 days of enactment of this provision to reflect increases in practice

costs since the limit was last changed, the payment limit for 1988 is set at $46. Requires the Secretary to establish the maximum payment limit in years after 1988 based on the payment limit during the preceding year, increased to reflect economic data and the actual costs of furnishing rural health clinic services.

(b) Report to Congress.—No provision.

Effective date.—Applies 120 days after the date of enactment. If the Secretary updates the 1988 payment limit prior to 120 days after enactment to account for increases in practice costs since the date on which such limit was last changed, the provision specifying a $46 limit is null and void.

Conference agreement

(a) Payment limit.—The conference agreement includes the House provision.

(b) Report to Congress.—The conference agreement includes the House provision.

(e) Clarification of Penalties for Unassigned Laboratory Services.—

Section 9271.—Authorizes the Secretary to impose sanctions, either in the form of civil money penalties or exclusion from the program for up to five years, on laboratories and physicians who knowingly, willfully and repeatedly submit claims to a patient on an unassigned basis.

Section 4084.—Similar provision except that sanctions may be imposed for a single instance of billing patients on an unassigned basis.

Effective dates.—

Section 9271 applies to services performed on or after January 1, 1988.

Section 4084 applies on enactment.

(f) Moratorium on Laboratory Payment Demonstrations.—

Section 9271.—Extends the prohibition for a period of one year, until January 1, 1989.

Section 4083.—No provision.

Effective date.—Enactment.

(g) Applying Prompt-Pay Interest Requirement for Rehabilitation Facilities.—

Section 9271.—Requires interest payments to all providers reimbursed by intermediaries for clean claims not paid within certain time limits.

Section 4083.—No provision.

Effective date.—Applies to claims received on or after enactment.

(h) Treatment of Certain Comprehensive Outpatient Rehabilitation Facilties.—

Section 9271.—Provides that the Secretary may not require that CORFs certified on or before July 1, 1987 limit services to a single location so long as such services are delivered as an integrated part of a rehabilitation plan.

Requires the Secretary to monitor the provision of CORF services at multiple sites and to report to Congress not later than January 1, 1989 on the quality of off-site services provided and on whether the exception to the single site rule of CORFs certified prior to July 1, 1987 should be extended to CORFs certified after that date.

Section 4083.—No provision.

Effective date.—Enactment.

19. Adjustments in Payments for Physician Services (Section 4014 of House Bill)

Present law

(a) Increase in Prevailing Charges for Certain Physician Services.—Medicare payments for physician services are limited by prevailing charges, where the prevailing charge is defined as the lowest amount that includes 75 percent of physicians' customary charges for the same service within a locality. Notwithstanding this definition, increases in prevailing charges are limited by increases in an index known as the Medicare Economic Index (MEI). Beginning January 1, 1987, the prevailing charge for non-participating physicians is 96 percent of the prevailing charge for the same service rendered by participating physicians.

(b) Customary Charge Floor.—Customary charges are the amounts a physician usually charges for a particular service. Physicians' customary charges are estimated from historical billing data.

(c) Increases in Maximum Allowable Actual Charge (MAACs).—The MAAC limits the extent to which non-participating physicians can increase their actual charges to Medicare beneficiaries.

(d) Adjustment to MEI.—The MEI limits annual increases in prevailing charges for physician services through use of an economic index that reflects increases in physicians' practice costs.

House bill

(a) Increase in Prevailing Charges for Certain Physician Services.—Requires the Secretary to establish each year a reasonable charge floor or lower limit equal to 55 percent of the average prevailing charge for participating physicians across all localities, weighted by the frequency of the service in each locality. If the prevailing charge level in 1989 for participating physicians, as otherwise determined, is less than the reasonable charge floor, the prevailing charge level is increased by one-third of the amount by which the reasonable charge floor exceeds the prevailing charge level otherwise determined. In 1990, prevailing charges for participating physicians below the floor are increased by one-half the difference between the floor and the otherwise determined prevailing charge. In 1991, the prevailing charges for participating physicians below the floor are increased to the floor. In each of these years, the prevailing charges of non-participating physicians for services with prevailing charges below the floor would be raised to 96 percent of the increased prevailing charges of participating physicians.

(b) Customary Charge Floor.—Specifies a rule that in 1989 and 1990, for services with prevailing charges that had been increased as result of application of the prevailing charge floor, physicians' customary charges are to be set such that they are not less than the prevailing charges determined with respect to the reasonable charge floor. For these services in 1991, physicians' customary charges are set equal to the reasonable charge floor.

(c) Increases in Maximum Allowable Actual Charges (MAACs).—Provides that in 1989 and 1990 for services with prevailing charges

that had been increased as a result of application of the prevailing charge floor, the MAAC, for non-participating physicians may not be less than 96 percent of the prevailing charge for participating physicians determined with respect to the reasonable floor.

(d) Adjustment to MEI.—Provides that notwithstanding any other provision, the increase in the MEI for years after 1988 is the percentage increase determined under current law minus 2 percentage points.

Effective date.—Applies to physician services furnished on or after January 1, 1989.

Senate amendment

No provision.

Conference agreement

(a) Increase in Prevailing Charges for Certain Physician Services.—The conference agreement includes the House provision with modifications. The agreement applies only to the prevailing charges for primary care services as defined item 1. In 1989, the floor is equal to 50 percent of the average prevailing for participating physicians without regard to specialty, weighted by the frequency of the service in each locality.

(b) Customary Charge Floor.—The conference agreement does not include the House provision.

(c) Increases in Maximum Allowable Charges.—The conference agreement does not include the House provision.

(d) Adjustment to MEI.—The conference agreement does not include the House provision.

20. Coverage of Influenza Vaccine and Its Administration (Section 4021 of House Bill).

Present law

Part B of Medicare currently provides coverage for pneumococcal and hepatitis B vaccines and their administration, but does not provide coverage for influenza vaccine.

House bill

Provides for coverage of influenza vaccine and its administration.

Effective date.—Applies to influenza vaccine administered on or after January 1, 1988.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision with an amendment. The agreement provides for a contingent effective date and provides for a demonstration project and evaluation. The Secretary is required to conduct a demonstration project to test the cost-effectiveness of furnishing influenza vaccine under Medicare. The project shall begin on October 1, 1988 and continue for a period of 24 months. Not later than October 1, 1990, the Secretary shall report to Congress on the results of the project. If the Secre-

tary finds the coverage to be cost-effective, the demonstration project would be discontinued, and the provisions providing coverage for influenza vaccine would become effective on November 1, 1990. If the Secretary cannot make such a finding, the demonstration project would continue for an additional 24 months. The Secretary is required to submit a final report to Congress on the results of the study not later than April 1, 1993. The provisions providing coverage of influenza vaccine would become effective on the first day of the first month after the final report is submitted unless the Secretary finds that such coverage is not cost-effective, in which case coverage would not be effective.

The agreement specifies a spending level of $25 million per year for the demonstration project. In lieu of direct reimbursement for the cost of the vaccine, the Secretary shall arrange to provide the vaccine to be used in the demonstration project. The Secretary shall acquire the vaccine using the most cost-effective method, including purchase of the vaccine at bulk rates.

21. Coverage of Mental Health Services (Section 4024 of Senate Amendment)

Present law

(a) Outpatient Services Under Part B.—A special limit is applicable with respect to expenses incurred in a calendar year in connection with the treatment of a mental, psychoneurotic or personality disorder of an individual who is not an inpatient of a hospital at the time services are rendered. Recognized charges cannot exceed the lesser of $312.50 or 62.5% of the reasonable charges for such services. It pays 80% of the recognized amount. Thus, the maximum payment is $250 per year.

(b) Partial Hospitalization Coverage.—Medicare authorizes coverage for hospital services incident to physicians' services provided to hospital outpatients. There is no specific authorization for a partial hospitalization benefit, under which psychiatric patients can be treated in a hospital on an outpatient basis.

Under program guidelines, hospital-based distinct and organized care programs can provide care for less than 24 hours a day. In general, to be covered under Medicare, the services must be incident to a physician's service and reasonable and necessary for the diagnosis and treatment of the patient's condition.

House bill

No provision.

Senate amendment

(a) Outpatient Services Under Part B.—Increases the limit on recognized charges to $1,375 per year; thus the maximum payment is $1,100. Brief office visits (as defined by the Secretary) for the sole purpose of prescribing or monitoring prescription drugs used in the treatment of such disorders are not included for purposes of the limit.

(b) Partial Hosptialization Coverage.—

(1) Includes "partial hospitalization services incident to physicians' services within the definition of covered Part B services. Partial hospitalization services means the items and services described

under (2) prescribed by a physician and provided under a program described in (3) under the supervision of a physician pursuant to an individualized written plan of treatment established and periodically reviewed by a physician in consultation with appropriate staff participating in the program. The plan must state the physician's diagnosis; type, amount, frequency and duration of items and services provided under the plan; and treatment goals.

(2) Specifies that the items and services are: (A) individuals and group therapy with physicians, psychologists (or other mental health professionals to the extent authorized under State law); (B) occupational therapy requiring the skills of a qualified occupational therapist; (C) services of social workers, trained psychiatric nurses and other staff trained to work with psychiatric patients; (D) drugs and biologicals furnished for therapeutic purposes (which cannot be self-administered); (E) individualized activity therapies that are not primarily recreational or diversionary; (F) family counseling (the primary purpose of which is to treat the individual's condition); (G) patient training and education (to the extent that training and educational activities are closely related to the individual's care and treatment; (H) diagnostic services; and (I) such other items and services as the Secretary may provide (not including meals and transportation). These items must be reasonable and necessary for the diagnosis and treatment of the individual's condition, reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization. They must be furnished pursuant to such guidelines relating to frequency and duration as the Secretary may establish taking into account accepted norms of medical practice and reasonable expectation of patient improvement.

(3) Specifies that a described program is a hospital-based or hospital-affiliated program which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour daily care.

(4) Requires physician certification, and recertification where such services are required over a period of time, that the individual would require inpatient psychiatric care in the absence of such services; an individualized, written plan for furnishing such services has been established and reviewed periodically by a physician, and the services are or were furnished while the patient was under a physician's care.

(5) Specifies that partial hospitalization services not directly provided by a physician are not subject to the Part B limit on outpatient mental health services.

Requires the Secretary to implement this provision so as to insure that there is no additional cost to the Medicare program.

Effective date.—(a) Applies with respect to calendar years beginning on or after January 1, 1988, (b) Enactment.

Conference agreement

(a) Outpatient Services Under Part B.—The conference agreement includes the Senate amendment with an amendment. The agreement provides for a phase-in of the benefit. In 1988, the maximum payment is increased to $450. The maximum payment is increased to $1,100 in 1989.

(b) Partial Hospitalization.—The conference agreement includes the Senate amendment with an amendment limiting application of the provision to hospital-based or hospital-affiliated providers as defined by the Secretary.

22. Coverage of Certified Nurse-Midwife Services (Section 4027 of Senate Amendment)

Present law

Medicare authorizes coverage of services, including nonphysicians services, "incident to" physicians services. The services of nonphysicians must be rendered under the physician's direct supervision by employees of the physician.

House bill

No provision.

Senate amendment

(a) Coverage.—Authorizes coverage under Part B of certified nurse-midwife services. Such services are defined as those furnished by a certified nurse-midwife, which the certified nurse midwife is legally authorized to perform under State law (or the regulatory mechanism provided by State law), whether or not the certified nurse midwife is under the supervision of, or associated with, a physician or other health care provider. A certified nurse midwife is defined as a registered nurse who has successfully completed a program of study and clinical experience, meeting guidelines established by the Secretary, and performs services in the area of management of the care of mothers and babies throughout the maternity cycle.

(b) Payment of Benefits.—Specifies that payments are to be determined on the basis of a fee schedule established by the Secretary. In no case can fee schedule amounts exceed 75% of the prevailing charge that would be allowed if the service were performed by a physician.

(c) Conforming Change.—Conforms the Medicaid definition to the Medicare definition.

Effective date.—Applies to services performed on or after July 1, 1988.

Conference agreement

(a) Coverage.—The conference agreement includes the Senate amendment with an amendment. The agreement specifies, that in cases where State law includes requirements governing physician supervision of certified nurse midwives, such requirements must be met in order for the services to be covered by Medicare. Services provided by nurse midwives may only be covered if such services would be covered if provided by a physician.

(b) Payment of Benefits.—The conference agreement includes the Senate amendment with an amendment specifying that the fee schedule amount can in no case exceed 65% of the prevailing charge that would be allowed if the service were performed by a physician. Payments for the services of certified nurse midwives can only be made on an assignment-related basis.

(c) Conforming Change.—The conference agreement includes the Senate amendment.

23. Psychologists' Services Provided in Clinics (Section 4028 of Senate Amendment)

Present law

Medicare does not currently make direct payments for psychological services delivered by a nonphysician provider except in the case of diagnostic testing services.

However, the services of psychologists employed by or providing services under arrangements with hospitals may be included within the definition of inpatient hospital services. Psychologists services may also be covered as "incident to" physicians' services provided there is direct personal supervision by a physician, and program payment is made directly to the physician.

Payment may be made under Medicare's Part B for rural health clinic services. Included in the definition of rural health clinic services are nurse practitioner and physician assistant services and incident services and supplies. The services of individuals are covered, whether or not the clinic is under the full-time direction of a physician, if the individual is legally permitted under State law to perform such services and meets training, education, and experience requirements prescribed by the Secretary.

House bill

No provision.

Senate amendment

(a) Coverage of Psychologists' Services Furnished at Rural Health Clinics.—Includes clinical psychologists in the definition of covered rural health clinic services even when such services are not provided under the supervision of a physician.

(b) Direct Payment for Psychologists' Services Furnished at a Community Health Center.—Authorizes coverage of and payments for (at an amount determined by a fee schedule established by the Secretary) "qualified psychologist services."

Defines "qualified psychologist services" as services furnished by clinical psychologist (as defined by the Secretary) at a community mental health center (as a community mental health center (as such term is used in the Public Health Service Act) which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law).

Effective date.—(a) Applies with respect to services furnished on or after the date of enactment. (b) Applies with respect to services performed on or after January 1, 1988.

Conference agreement

(a) Coverage of Psychologists' Services Furnished at a Community Mental Health Center.—The conference agreement includes the Senate amendment.

(b) Direct Payment for Psychologists' Services Furnished at a Community Mental Health Center.—The conference agreement includes the Senate amendment with an amendment specifying that payment may only be made on an assignment related basis.

24. Payments for Services of Physician Assistants (Section 4031 of Senate Amendments)

Present law

OBRA provided for Medicare reimbursement for the services of physician assistants when provided in a hospital, nursing home or as an assistant at surgery. Allowable charges are limited to specific percentages of the amount that would be allowed if the service was performed by a physician. The applicable percentages are 65 percent for assistants at surgery, 75 percent for other services provided in a hospital, and 85 percent for services provided in a nursing home.

House bill

No provision.

Senate amendment

Provides for Medicare reimbursement for the services of physician assistants in all settings. Allowable charges are limited to specified percentages of the amount that would be allowed if the service was performed by a physician. The applicable percentages are 75 percent for services provided in a hospital (other than for services provided as assistants at surgery), 85 percent for services provided in a nursing home, and 65 percent for assistants at surgery and for services provided in all other settings.

Effective date.—Applies to services furnished on or after January 1, 1988.

Conference agreement

The conference agreement includes the Senate amendment with amendments. The expansion of current coverage of services of physician assistants to all settings is limited to services provided in rural health manpower shortage areas. Allowable charges for the additional services of physician assistants provided for under this provision in rural health manpower shortage areas are limited to 85 percent of the amount that would be alllowed if the service was performed by a physician. The provision is effective Janaury 1, 1989.

25. Physician Payment Studies (Section 9270 and 4082 of the House Bill; Section 4021(j) of Senate Amendment)

Present law

(a) Report on Variations in Classifications of Procedures and Uniform Definitions of Procedures.—No provision.

(b) Expansion of Relative Value Study.—The Secretary is required to conduct a study that establishes a relative value scale that establishes a numerical relationship among various physician services. The results of this study are to be reported to Congress not later than July 1, 1989. This report is to include recommendations for the application of the relative value scale to payment of physician services rendered after December 31, 1989. The Secretary has entered into a cooperative agreement with Harvard University for the conduct of this study. Under the existing cooperative agree-

ment, the study does not encompass the services provided by all specialties under Medicare.

(c) Other Physicians Payment Studies.—

(1) The Secretary is required to conduct a study that establishes a relative value scale that establishes a numerical relationship among various physician services. The results of this study are to be reported to Congress not later than July 1, 1989. This report is to include recommendations for the application of the relative value scale to payment of physician services rendered after December 31, 1989.

(2) No provision.

(3) No provision.

(4) No provision.

(5) The Secretary is required to conduct a study that establishes a relative value scale that establishes a numerical relationship among various physician services. The results of this study are to be reported to Congress not later than July 1, 1989. As part of this report the Secretary shall develop and assess an index that can be used for making adjustments in prices to reflect justifiable differences in the costs of practice based on geographic location. The Secretary is required to develop an interim index prior to January 1, 1988 based on the most accurate and recent data with respect to the costs of practice. The Secretary is required to collect data with respect to the cost of practice for the purpose of refining the interim index prior to December 31, 1989 and for updating the index thereafter.

The Physician Payment Review Commission is required to make annual recommendations to Congress with respect to issues related to physician payments under Part B. In making its recommendations, the Commission shall consider the feasibility and desirability of reducing differences in payment amounts based to geographic variations.

(d) Study of Payment for Chemotherapy in Physicians' Offices.— No provision.

(e) Study of Prevailing Charges for Anesthesia Services.—No provision.

House bill

(a) Report on Variations in Classifications of Procedures and Uniform Definitions of Procedures.—

Section 9270.—Requires the Secretary to conduct a study and report to Congress by May 1, 1988 on variations in payment practices for physician services by the carriers processing Part B claims. The study must examine variations among carriers in the services included in global fees, and in pre- and post-operative services included in payment for an operation.

Requires the Secretary, in consultation with appropriate national medical specialty societies, to develop uniform definitions of physicians' services which could serve as the basis for payments under Part B. To the extent practicable, the definition of a service is to include ancillary services commonly performed in conjunction with a major service. Pre- and post-operative services are to be defined within the operative procedure. Similar procedures are to be combined if they are similar in resource requirements.

Section 4082.—No provision.

(b) Expansion of Relative Value Study.—

Section 9270.—Requires the Secretary to expand the current relative value scale study to include services provided by 14 additional specialties. These specialties are: cardiology, emergency medicine, gastroenterology, hematology, infectious disease, nephrology, neurology, neurosurgery, nuclear medicine, oncology, physical medicine and rehabilitation, plastic surgery, pulmonary medicine, and radiation therapy. This expansion is to be conducted such that the study in progress is not delayed. The Secretary shall report to Congress with respect to these additional specialties by not later than October 1, 1989. The Secretary shall submit to the Physician Payment Review Commission any report submitted to the Secretary pursuant to a cooperative agreement and all relevant supporting data by no later than 30 days after the report is received by the Secretary.

Section 4082.—No provision.

(c) Other Physician Payment Studies.—

Section 9270.—(1) Requires the Secretary to conduct a study of changes in the payment system that would be required to implement a national fee schedule on or after January 1, 1990. The study shall indentify major technical problems and make recommendations on ways to address such problems. The Secretary shall report to Congress on the results of this study by not later than July 1, 1989.

(2) Requires the Secretary to conduct a study if issues related to the volume and intensity of physicians' services under Part B. Issues addressed in this study must include: (1) historical trends; (2) geographic variations in volume and intensity of services; (3) an analysis of the effectiveness of current methods to ensure that payments are made only for medically necessary services; (4) development and analysis of alternative methods to control volume and intensity of services; and (5) the impact of implementation of a relative value scale on the volume and intensity of physicians' services. The Secretary shall report to Congress on the results of this study simultaneously with the relative value scale report but in no case later than July 1, 1989.

(3) Requires the Secretary to conduct a study of alternative definitions and codes for office and hospital visits, and consultations. These definitions are to assure a reliable and accurate distinction between levels of services which involve different amounts of resources, and could be recorded on claims. The Secretary shall report to Congress no later than July 1, 1989.

(4) Requires the Secretary to conduct a survey to determine the distribution of liabilities and expenditures for health care services by individuals entitled to Medicare, including liabilities for charges in excess of the reasonable charges recognized. The survey must determine the collection rates among different classes of physicians for required coinsurance amounts and for charges in excess of the reasonable charge on unassigned claims. The Secretary shall report to Congress no later than July 1, 1989.

(5) Requires the Physician Payment Review Commission to study geographic variations in reasonable or prevailing charges under Part B. The Commission shall report to Congress on the results of

the study by March 1, 1988. The report shall include recommendations for reducing geographic variations in such charges after adjustments for differences in the cost of practice and in the cost of living.

Section 4092.—No provision.

(d) Study of Payment for Chemotherapy in Physicians' Offices.—

Section 9270.—No provision.

Section 4082.—Requires the Secretary to conduct a study of ways of modifying payments under Part B of chemotherapy provided to cancer patients in physicians' offices. The study is to be performed in consultation with physicians and other health care providers who are experts in cancer therapies, and in consultation with insurers who have experience with these payment issues. The Secretary shall report to Congress no later than April 1, 1989.

(e) Study of Prevailing Charges for Anesthesia Services.—No provision.

Effective date.—

Section 9270.—Enactment.

Section 4082.—Enactment.

Senate amendment

(a) Report on Variations in Classifications of Procedures and Uniform Definitions of Procedures.—No provision.

(b) Expansion of Relative Value Study.—No provision.

(c) Other Physician Payment Studies.—No provision.

(d) Study of Payment for Chemotherapy in Physicians' Offices.—No provision.

(e) Study of Prevailing Charges for Anesthesia Services.—Requires the Secretary to conduct a study of variations in the conversion factors used by carriers to determine the prevailing charge for anesthesia services. The Secretary shall report the results of the study and make recommendations for appropriate adjustments to the converstion factors by not later than January 1, 1989.

Effective date.—Enactment.

Conference agreement

(a) Report on variations in classifications of procedures and uniform definitions of procedures.—The Conference agreement includes the House provision.

(b) Expansion of relative value study.—The conference agreement includes the House provision with an amendment that adds the following specialties to the list of 14 specialties added to the relative value study: dermatology, and physicians who specialize is osteopathic procedures.

(c) Other physician payment studies.—The conference agreement includes the House provision with an amendment.

(d) Study of payment for chemotherapy in physicians' offices.—The conference agreement includes the House provision.

(e) Study of prevailing charges for anesthesia services.—The conference agreement includes the Senate amendment.

26. Extension of Reductions Under Sequester Order (Section 4014 of Senate Amendment)

Present law

On November 20, 1987, the President issued a final sequester order pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100–119). Under the terms of the sequester order, Medicare benefit payments for services rendered on or after November 21 and before the end of the fiscal year are reduced by 2.324 percent, to yield an aggregate reduction in benefit payments of 2 percent over the entire fiscal year.

House bill

No provision.

Senate amendment

Provides that the reductions in Medicare payment amounts required by the final sequester order shall continue to be effective for all services through December 31, 1987. For physician, durable medical equipment and other nonphysician services reimbursed under Part B on a reasonable charge basis, the reduction amount shall continue to be effective through January 15, 1988.

Effective date.—Enactment.

Conference agreement

The conference agreement includes the Senate amendment with modification that extends the reductions in benefit payments under the sequester order for all services covered under Medicare Part B provided through March 31, 1988.

27. Miscellaneous and Technical Provisions (Sections 9271 and 4009, 4010, 4012, 4013, 4022, 4072, 4075, 4083, 4084, and 4086; Sections 4011(b), 4021 (e), (f), (g), (i), and (k), 4084, 4088, and 4090 of Senate Amendment)

Present law

(a) Prompt Submittal of Data by Secretary.—The Secretary has developed a national Part B data base known as the Part B Medicare Annual Data System (BMAD).

(b) Capacity to Set Geographic Payment Limits.—The Secretary is required to conduct a study and report to Congress on the development of a relative value scale for physician services by no later than July 1, 1989. As part of this activity, the Secretary is required to develop and assess an appropriate index for adjusting payments to reflect justifiable differences in the cost of practice and across geographic areas.

(c) Revision of Appointment Process for the Physician Payment Review Commission.—The Director of the Office of Technology Assessment (OTA) makes appointments to the Physician Payment Review Commission. The Commission is composed of individuals with expertise in the provision and financing of physician services. The Director must seek nominations from a wide range of groups including national organizations representing physicians, consumers, the elderly, medical schools, hospitals, and health benefits programs.

(d) Technical Changes in Application of Maximum Allowable Actual Charge (MAAC).—

(1) OBRA established limits known as MAACs on the actual charges that non-participating physicians can bill patients. The MAAC limits are applied to the average charge a physician may bill for a particular service during a fee screen year. That is, individual charges may exceed the MAAC so long as the average over the period does not exceed the MAAC.

(2) MAAC limits are determined separately for each non-participating physician by reference to the physician's actual charges submitted during the base period of April 1 through June 30, 1984. If a physician had no charges for a particular service during the base period, the physician's MAAC for the service is set at the 50th percentile of the customary charges of other non-participating physicians in the carrier locality.

(3) MAAC limits are determined by reference to charges submitted during the April 1 through June 30, 1984 based period.

(4) MAAC limits are determined separately for each nonparticipating physician.

(e) Clarification of Penalties for Unassigned Laboratory Services.—DEFRA established fee schedules for reimbursement of laboratory services. Services performed by independent laboratories are required to be billed on an assigned basis. COBRA required that laboratory services performed in physician's office are required to be billed on an assigned basis. No penalties were specified for instances of billing for these services on an unassigned basis.

(f) Moratorium on Laboratory Payment Demonstrations.—The Secretary is prohibited from conducting any demonstration project of competitive bidding for the payment of clinical laboratory services before January 1, 1988.

(g) Applying Prompt-Pay Interest Requirement for Rehabilitation Facilities.—Interest payments must be made by intermediaries to hospitals, nursing homes, home health agencies and hospices and by carriers to Part B physicians and providers when clean claims are not paid within certain time limits. Interest payments are not required when Part B providers are paid by intermediaries.

(h) Treatment of Certain Comprehensive Outpatient Rehabilitation Facilities.—Comprehensive outpatient rehabilitation facilities (CORFs) provide physical therapy, occupational therapy, and speech pathology services on an outpatient basis. The Secretary has required by regulation that all services be provided at a single location.

(i) Elimination of 1975 Floor for Prevailing Physician Charges.—Increases in the prevailing charges for physician service are limited by application of an economic index. If application of this index results in a prevailing charge lower than applied during the year ending June 30, 1975, the prevailing charge is increased to the level that existed during the year ending June 30, 1975.

(j) Payment for Certified Registered Nurse Anesthetists (CRNAs).—OBRA authorized direct reimbursement for the services of CRNAs beginning January 1, 1989. The Secretary is required to develop a fee schedule for these services based on audited hospital cost reports for cost reporting periods ending in fiscal year 1985. Payment for the services of a CRNA may be made to the CRNA, or

to a hospital, physician, or group practice that employs the CRNA or has a contractual relationship that provides that such entities may receive reimbursement for the CRNA's services.

(k) Clarification of Coverage of Drugs Used in Immunosuppressive Therapy.—Outpatient immunosuppressive drugs provided to a transplant patient within one year of a Medicare covered transplant procedure are a covered benefit under Part B.

(l) Revision of Part B Hearings.—Beneficiaries dissatisfied with a carrier's disposition of a Part B claim are entitled to review by the carrier. If the amount in dispute is in excess of $100, then the beneficiary has a right to a fair hearing by the carrier. The beneficiary has a right to a hearing before an administrative law judge if the amount if $500 or more, or to judicial review if the amount in dispute is $1,000 or more. National coverage determinations are subject to judicial review but not to review by an administrative law judge.

(1) Judicial review may not find national coverage determinations to be unlawful or to set them aside on the grounds that they were not published in accordance with Chapter 5, title 5 of the United States Code or with the public notice and comment requirements of the Social Security Act. Chapter 5, title 5 of the United States Code includes the Freedom of Information Act.

(2) At present, parties must exhaust all administrative review procedures before a court will accept jurisdiction.

(3) Carriers must establish and maintain procedures for conducting reviews and fair hearings of beneficiary appeals when requests for payment are denied or are not acted on promptly, or when the amount in dispute is at least $100 but not more than $500.

(m) Treatment of Employees of Physician Payment Review Commission as Congressional Employees.—The Physican Payment Review Commission was established by Congress to provide analysis and recommendations regarding Medicare physician payments policies.

(n) Change in Reporting Date for Physician Payment Review Commission.—The Physician Payment Review Commission is required to submit its recommendations regarding payments for physician services annually to Congress by March 1 of each year.

(o) Delay in Establishing a Physician Identifier System.—COBRA required the Secretary to establish and implement a system of unique identifiers for physicians providing services under Medicare not later than July 1, 1987.

(p) Assistants at Cataract Surgery.—COBRA denied Medicare payments for assistants at surgery in a cataract operation unless prior approval was obtained from an appropriate peer review organization or carrier. The PRO can approve an assistant only if warranted by the medical condition of the patient. The provision was effective April 1, 1986. The Tax Reform Act of 1986 allowed payment through December 31, 1986 if the use of an assistant was approved after surgery. PRO pre-surgery review became effective March 1, 1987.

COBRA authorized the Secretary to impose sanctions for physicians who knowingly and willfully billed the beneficiary for services for which payment could not be made.

(q) Utilization Screens for Physician Services Provided to Patients in Rehabilitation Hospitals.—Carriers are required to institute utilization safeguards to assure that payments are made for covered services that are medically necessary. Carriers use utilization screens to check for possible overutilization of services. If services are provided in excess of that level, the case is targeted for further review. The screen for physician visits to inpatients does not distinguish between visits to patients in acute care settings and those in rehabilitation settings.

(r) Collection of Past Due Amounts Owed by Physicans Who Breached Contracts Under National Health Service Corps Scholarship Program.—The National Health Service Corps provides scholarship funds for health professions training in exchange for a promise to service in a health manpower shortage area for a specified period of time (one year of service for each year of scholarship assistance received). If the physician breaches this agreement, the scholarship, plus a penalty, must be repaid.

(s) Conforming Amendment to Reporting Hospital Outpatient Information.—The Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (P.L. 95–142) required the Secretary to establish within one year of enactment uniform reporting requirements for inpatient hospitals and other providers. The Social Security Amendments of 1983 required the Secretary to maintain, at least until September 30, 1988, a system for the reporting of cost information by PPS hospitals, including information on outpatient services.

(t) Technical Amendments.—No provision.

House bill

(a) Prompt Submittal of Data by Secretary.—

Section 9271.—Requires the Secretary each year beginning in 1988 to provide national data on Part B services (BMAD system data files) to the Physician Payment Review Commission (PPRC), CBO, and CRS by October 1 of the following year. To insure data availability on a timely basis, the Secretary must require that carriers submit data for each year to the Department not later than July 1 of the following year. The Secretary is required to consult annually with the PPRC, CBO and CRS to establish and revise BMAD reporting standards. The Secretary is required to provide PPRC, CBO and CRS with such other data as may be reasonably requested. The Secretary shall develop, in consultation with the PPRC, CBO and CRS, a system for providing these entities on a quarterly basis with summary data on aggregate expenditures by type of service and provider. Such quarterly data shall be provided not later than 90 days after the end of each quarter beginning with the calendar quarter ending March 31, 1989.

Section 4083.—No provision.

Effective date.—Enactment.

(b) Capacity to Set Geographic Payment Limits.—

Section 9271.—Requires the Secretary to develop the capacity to implement geographic limits on charges and payments based on statewide, regional or national averages (or percentile in a distribution) of prevailing charges or payment amounts. The limits shall take into account differences in costs of practice and cost of living.

Section 4083.—No provision.

Effective date.—Enactment.

(c) Revision of Appointment Process for the Physician Payment Review Commission.—

Section 9271.—Provides that the Commission shall be composed of individuals with national recognition for their expertise in health economics, physician reimbursement, medical practice and other related fields. Repeals the requirement that the Director of OTA seek nominations.

Section 4083.—No provision.

Effective date.—Applies to appointments made after enactment.

(d) Technical Changes in Application of Maximum Allowable Actual Charge (MAAC).—

(1) *Section 9271.*—Provides that the MAAC limits apply to the actual charge for each service. Provides for sanctions against physicians who repeatedly violate the MAAC limit.

Section 4009.—Similar provision except that sanctions may be imposed for a single violation of the MAAC limit.

(2) *Section 9271.*—Provides that a physician without a Medicare charge for a service during the base period who can show that he had actual charges for that service prior to June 30, 1984 for either Medicare or non-Medicare patients will have his 1988 MAAC limits computed based on his actual charges for the procedure.

Section 4009.—Similar provision except that a physician without a Medicare charge for a service during the base period must show that he had charges for that service in the 12 month period ending March 31, 1984. The 1988 MAAC is then based on the actual charges during such 12 month period.

(3) *Section 9271.*—No provision.

Section 4009.—Provides that for services furnished on or after January 1, 1989, the MAAC for nonparticipating physicians is computed using a base period of the twelve months ending June 30, 1986.

(4) No provision.

Effective dates.—

Section 9271.—(1) applies to charges imposed for services provided on or after January 1, 1988. (2) applies on enactment. (3) applies to charges imposed for services furnished on or after January 1, 1989.

Section 4009.—(1) applies to charges imposed for services provided on or after January 1, 1988. (2) applies on enactment. (3) applies to charges imposed for services furnished on or after January 1, 1989.

(e) Clarification of Penalties for Unassigned Laboratory Services.—

Section 9271.—Authorizes the Secretary to impose sanctions, either in the form of civil money penalties or exclusion from the program for up to five years, on laboratories and physicians who knowingly, willfully and repeatedly submit claims to a patient on an unassigned basis.

Section 4084.—Similar provision except that sanctions may be imposed for a single instance of billing patients on an unassigned basis.

Effective dates.—

Section 9271 applies to services performed on or after January 1, 1988.

Section 4084 applies on enactment.

(f) Moratorium on Laboratory Payment Demonstrations.—

Section 9271.—Extends the prohibition for a period of one year, until January 1, 1989.

Section 4083.—No provision.

Effective date.—Enactment.

(g) Applying Prompt-Pay Interest Requirement for Rehabilitation Facilities.—

Section 9271.—Requires interest payments to all providers reimbursed by intermediaries for clean claims not paid within certain time limits.

Section 4083.—No provision.

Effective date.—Applies to claims received on or after enactment.

(h) Treatment of Certain Comprehensive Outpatient Rehabilitation Facilities.—

Section 9271.—Provides that the Secretary may not require that CORFs certified on or before July 1, 1987 limit services to a single location so long as such services are delivered as an integrated part of a rehabilitation plan.

Requires the Secretary to monitor the provision of CORF services at multiple sites and to report to Congress not later than January 1, 1989 on the quality of off-site services provided and on whether the exception to the single site rule for CORFs certified prior to July 1, 1987 should be extended to CORFs certified after that date.

Section 4083.—No provision.

Effective date.—Enactment.

(i) Elimination of 1975 Floor for Prevailing Physician Charges.—

Section 9271.—No provision.

Section 4010.—Provides that the 1975 floor on prevailing charges is eliminated.

Effective date.—Applies to payments for services rendered on or after January 1, 1988.

(j) Payment for Certified Registered Nurse Anesthetists (CRNAs).—

Section 9271.—No provision.

Section 4012.—Provides that in setting the fee schedule for CRNAs, the Secretary shall use hospital cost reports for reporting periods beginning in fiscal year 1985. Also provides that the Secretary may use other data as necessary.

Effective date.—Enactment.

(k) Clarification of Coverage of Drugs Used in Immunosuppressive Therapy.—

Section 9271.—No provision.

Section 4022.—Provides that coverage for outpatient immunosuppressive drugs under Part B includes all prescription drugs used in immunosuppressive therapy.

Effective date.—For drugs dispensed on or after enactment.

(l) Revision of Part B Hearings.—

Section 9271.—No provision.

Section 4072.—

(1) Provides that judicial review of national coverage determinations may not find the determinations unlawful or set them aside

on the grounds that they were not published in accordance with the requirements of the Administrative Procedures Act and the Social Security Act. This exemption does not include the Freedom of Information Act.

(2) Provides for expedited review of cases by an administrative law judge if the moving party alleges that there are no material issues of fact in dispute.

(3) Requires the Secretary to establish carrier performance standards for reviews and hearings. The carriers are expected to complete reviews within 45 days in 95 percent of such requests. Carriers are expected to make a final determination in 90 percent of fair hearings within 120 days of such requests.

Effective dates.—(1) applies on enactment. (2) applies to requests for hearings filed after the end of the 60 day period beginning on enactment. (3) applies to evaluations of carriers' performance under contracts entered into or renewed on or after January 1, 1988.

(m) Treatment of Employees of Physician Payment Review Commission as Congressional Employees.—

Section 9271.—No provision.

Section 4075.—Provides that for purposes of pay (other than pay for members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.

Effective date.—Enactment.

(n) Change in Reporting Date for Physician Payment Review Commission.—No provision.

(o) Delay in Establishing a Physician Identifier System.—

Section 9271.—No provision.

Section 4083.—Changes the date by which the physician identifier system is required to be implemented to October 1, 1988.

Effective dates.—Enactment.

(p) Assistants at Cataract Surgery.—No provision.

(q) Utilization Screens for Physician Services Provided to Patients in Rehabilitation Hospitals.—No provision.

(r) Collection of Past Due Amounts Owed by Physicians Who Breached Contracts Under National Health Service Corps Scholarship Program.—No provision.

(s) Conforming Amendment to Reporting Hospital Outpatient Information.—Specifies that the existing reporting system is applicable only for cost reporting periods beginning prior to October 1, 1988, and establishes new specific reporting requirements for fiscal intermediaries and hospitals. Specifies that the information reported is to include outpatient visits, expenses, and revenue.

Annual reporting by each hospital.—Requires each hospital to submit information on outpatient services to the fiscal intermediary within 90 days after the end of the hospital's cost reporting period.

Effective date.—Applies to hospital cost reporting periods beginning on or after October 1, 1988.

(t) Technical Amendments.—

Section 9271.—Makes miscellaneous and technical amendments, including (1) allowing hospital to bill for clinical laboratory tests performed by other entities under certain arrangements, (2) provid-

ing that the maximum allowable actual charges of physicians who are nonparticipating but who had participated during any period on or after January 1, 1987 are computed as if the physician had been a non-participating physician for all periods after January 1, 1987, (3) providing that until the new Endstage Renal Disease network organizations established under OBRA are created, payments to existing network organization will be distributed according to the guidelines for distribution of payments in fiscal year 1986, (4) providing that incentive payments may be made to carriers if they increase the proportion of total payments that are rendered by participating physicians, and (5) providing that date by which the Secretary must report to Congress on a study to develop a strategy for quality assurance is changed from October 21, 1989 to January 1, 1990.

Section 4086.—Identical provisions except that items (1), (4), and (5) above are not included.

Effective dates.—

Section 9271.—Enactment.

Section 4086.—Enactment.

Senate Amendment

(a) Prompt Submittal of Data by Secretary.—

(b) Capacity to Set Geographic Payment Limits.—No provision.

(c) Revision of Appointment Process for the Physician Payment Review Commission.—No provision.

(d) Technical Changes in Application of Maximum Allowable Actual Charge (MAAC).—

(1) No provision.

(2) Provides that a physician without a Medicare charge for a service during the base period who can show that he had actual charges for that service during any calendar quarter during the 12 month period ending March 31, 1984 for either Medicare or non-Medicare patients will have his 1988 MAAC limits computed based on his actual charges for the procedure during the most recent calendar quarter during such 12 month period for which he had actual charges.

(1) No provision.

(4) Provides that uniform MAACs may be applied to group practices. In order to qualify for a group MAAC, the charges of physicians in a multi-specialty group must be uniform within specialty but may vary between specialties. In the case of hospital departmental practice plans, each department is treated separately.

Effective date.—April 1, 1988.

(e) Clarification of Penalties for Unassigned Laboratory Services.—No provision.

(f) Moratorium on Laboratory Payment Demonstrations.—Extends the prohibition of any competitive bidding demonstration project for a period of two years, until January 1, 1990. The Secretary may contract for the design and selections of sites for such demonstration projects.

Effective date.—Enactment.

(g) Applying Prompt-Pay Interest Requirement for Rehabilitation Facilities.—Adds comprehensive outpatient rehabilitation facilities and rehabilitation agencies to the list of providers eligible to re-

ceive prompt-pay interest for clean claims not paid within certain time limits. The Secretary is required to provide for amendments to contracts with intermediaries in order to implement the provision. This provision also states that for the purposes of the Balanced Budget and Emergency Deficit Control Act of 1987, this section is a necessary (but secondary) result of a significant policy change.

Effective date.—Applies to claims received on or after enactment.

(h) Treatment of Certain Comprehensive Outpatient Rehabilitation Facilities.—Provides that there shall be no requirement that CORFs provide physical therapy, occupational therapy or speech therapy at any fixed location so long as such services are delivered as an intergrated part of a rehabilitation plan and payments are not otherwise made under Medicare.

Effective date.—Enactment.

(i) Elimination of 1975 Floor for Prevailing Physician Charges.—No provision.

(j) Payment for Certified Registered Nurse Anesthetists (CRNAs.—Provides that in setting the fee schedule for CRNAs, the Secretary shall use hospital cost reports for reporting periods ending in fiscal year 1985, and such other data as the Secretary determines. This provision also adds ambulatory surgical centers to the list of entities that may bill and be reimbursed for the services of CRNA's when the CRNA is either employed by or has a contractual arrangement with the entity.

Effective date.—Applies as if included in the amendment in OBRA of 1986.

(k) Clarification of Coverage of Drugs Used in Immunosuppressive Therapy.—No provision.

(l) Revision of Part B Hearings.—No provision.

(m) Treatment of Employees of Physician Payment Review Commission as Congressional Employees.—No provision.

(n) Change in Reporting Date for Physician Payment Review Commission.—Changes the reporting date to May 1 each year.

Effective date.—Applies to report for years after 1987.

(o) Delay in Establishing a Physician Identifier System.—No provision.

(p) Assistants at Cataract Surgery.(1) Date for Applying Civil Penalties for Improper Use of Assistants in Performing Cataract Surgery.—Specifies that civil penalties will not apply to cases for billing for an assistant at surgery for surgeries performed prior to March 1, 1987.

(2) Assistants at Cataract Surgery.—Permits the PRO, with the concurrence of the appropriate carrier, to approve an assistant at cataract surgery if it has determined that use of an assistant is necessary to perform a surgical technique of established economic benefit (taking into account the cost of the assistant) that eliminates the need for an anesthesiologist or nurse anesthetist.

Effective date.—Effective as if included in COBRA. (b) Applies with respect to services furnished on or after the date of enactment.

(q) Utilization Screens for Physician Services Provided to Patients in Rehabilitation Hospitals.—Requires the Secretary to establish (in consultation with physician groups including those representing

rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitative hospitals and units and patients in long-term care hospitals receiving rehabilitative services.

Requires the Secretary to take appropriate steps to implement the utilization screen within 12 months of enactment.

Effective date.—Enactment.

(r) Collection of Past Due Amounts Owed by Physicians who Breached Contracts Under National Health Service Corps Scholarship Programs.—

(1) Agreements.—(i) Adds a new Section 1891 to the Social Security Act: "Offset of Payments of Physicians to Collect Past-Due Obligations Arising From Breach of Scholarship Obligations." The Section requires the Secretary to enter into an agreement with any physician who, by reason of a breach of contract with the National Health Service Corps Scholarship Program, owes a past-due obligation to the U.S. unless that physicians has entered into a new contract pursuant to P.L. 100–177 to fulfill his original contract obligation.

(ii) Requires the agreement to provide that:

(A) Deduction are to be made from amounts otherwise payable to the physician under Medicare and Medicaid, in accordance with a schedule agreed to by the Secretary and the physician, until the past-due obligation (and accrued interest) have been repaid;

(B) Payment under Medicare to these physicians can only be made on an assignment-related basis; and

(C) If the physician does not provide a sufficient quantity of Medicare and Medicaid services to maintain the collection according to the agreement formula and schedule, or if the physician refuses to enter into an agreement or breaches any provision of the agreement, the Secretary must immediately inform the Attorney General. The Attorney General is required to immediately commence an action to recover the full amount of the past due obligation. The Secretary is required to bar the physician from Medicare and Medicaid until the entire past-due obligation has been repaid.

(D) Prohibits the Secretary from barring a physician is a sole community physician or sole source of essential specialized services in the community.

(2) Past-Due Obligation.—Specifies that a past-due obligation is any amount: (A) owed by a physician to the U.S. by reason of a breach of a National Health Service Corps scholarship contract, and (B) which has not been paid by the deadline established by the Secretay and has not been cancelled, waived, or suspended by the Secretary.

(3) Collection Not Exclusive.—Specifies that the new Section 1890 does not preclude the U.S. from applying other provisions of law otherwise applicable to the collection of obligation owed to the U.S.

(4) Collection From Providers and Health Maintenance Organizations.—(A) Requires the Secretary to deduct past-due obligations from payments to a provider, health maintenance organization (HMO) or competitive medical plan (CMP) in the case of a physician who owes a past-due obligation and is an employee of a provid-

er (which has an agreement with Medicare) or of an HMO or CMP (with a contract with Medicare).

(B) Specifies that the deduction cannot be made until 6 months after the Secretary notifies the provider, HMO or CMP of the amount to be deducted and the physicians to whom the deductions are attributable.

(C) Specifies that such deduction relieves the physician of the obligation (to the extent of the amount collected) to the U.S. The provider, HMO or CMP has a right of action to collect from the physicians the deducted amount (including accumulated interest).

(D) Specifies that no deduction shall be made if, within 6 months of the notice, the physician pays the past-due obligation or is no longer an employee of the provider, HMO or CMP.

(E) Requires the Secretary to apply these requirements in the case of a physician who is a member of a group practice if the group practice submits bills as a group.

(5) Notification to and Agreement With State Medicaid Agencies.—Requires the Secretary to notify each Medicaid agency of a physician who owes a past-due obligation. If the Physician receives (or is employed by any entity which receives) Medicaid payments, the Secretary is required to enter into an agreement with each State under which the amounts otherwise payable will be deducted as provided under (1) or (4) above. Deductions are to be made only from the Federal share of Medicaid payments. Amounts paid to the State are to be reduced accordingly.

(6) Transfer From Trust Funds.—Specifies that deducted amounts are to be transferred from the appropriate trust fund to the general fund of the Treasury and credited as payment of the named physician's past-due obligation.

(7) Medicaid Amendment.—Requires States to make deductions as specified by the Secretary under (5) above. Deductions are to be made from the Federal share of Medicaid payments and credited as payment of the named physician's past-due obligation.

(8) PHS Act Amendment.—Amends the PHS Act to provide for collection of past-due National Health Service Corps scholarship obligations through Medicare and Medicaid payments.

Effective date.—(1)-(6) Enactment. (7) applies to calendar quarters beginning after enactment, except that delay is permitted where State legislation required. (8) Enactment, except provision prohibiting discharge of obligations in bankruptcy applies with respect to contracts entered into after the date of enactment.

(s) Conforming Amendment to Reporting Hospital Outpatient Information—No provision.

(t) Technical Amendments.—No provision.

Conference Agreement

(a) Prompt submittal of data by Secretary.—The conference agreement includes the House provision.

(b) Capacity to set geographic payment limits.—The conference agreement includes the House provision.

(c) Revision of appointment process for the Physician Payment Review Commission.—The conference agreement includes the House provision with a modification to require a mix of profession-

als board geographics representation and balance between urban and rural representatives.

(d) Technical changes in application of maximum allowable actual charge.—The conference agreement includes the House provision contained in Section 9271(d).

(e) Clarification of penalties for unassigned laboratory services.—The conference agreement includes the House provision contained in Section 9271(e).

(f) Moratorium on laboratory demonstrations.—The conference agreement includes the House provision.

(g) Applying prompt-pay interest requirement for rehabilitation facilities.—The conference agreement includes the Senate amendment.

(h) Treatment of certain comprehensive outpatient rehabilitation facilities.—The conference agreement includes the Senate amendment.

(i) Elimination of 1975 floor for prevailing physician charges.—The conferenc agreement includes the House amendment.

(j) Payment for certified registered nurse anesthetists.—The conference agreement includes the Senate amendment.

(k) Clarification of coverage of drugs used in immunosuppressive therapy.—The conference agreement includes the House provision.

(l) Revision of Part B hearings.—The conference agreement includes the House provision with amendments. The effective date for the carrier performance standards for reviews and hearings applies to evaluations of carrers' performance under contracts entered into or renewed on or after July 1, 1988. The General Accounting Office is required to conduct a study of the cost-effectiveness of the current requirement for carrier hearings prior to a hearing before an administrative law judge.

(m) Treatment of Employees of Physical Payment Review Commission as Congressional Employees.—The conference agreement includes the House provision with an amendment that provides for similar treatment for employees of the Prospective Payment Assessment Commission.

(n) Change in reporting date for Physician Payment Review Commission.—The conference agreement includes the Senate amendment with an amendment setting the reporting date to March 31 of each year.

(o) Delay in establishing a physician identifier system.—The conference agreement includes the House provision.

(p) Assistants at cataract surgery.—The conference agreement includes the Senate amendment with an amendment that strikes the provision authorizing PROs to approve payment in certain cases for an assistant at cataract surgery in lieu of an anesthesiologist or nurse anesthetist.

(q) Utilization screens for physician services provided to patient in rehabilitation hospitals.—The conference agreement includes the Senate amendment.

(r) Collection of past due amounts owed by physicians who breached contracts under National Health Service Corps Scholarship program.—The conference agreement includes the Senate amendment with an amendment striking references to Medicaid.

(s) Conforming amendment to reporting hospital outpatient information.—The conference agreement includes the House provision with modifications. The existing cost reporting system is preserved indefinitely. The outpatient information requirement is included in the two State demonstration projects mandated under the hospital information reporting provisions elsewhere in this bill.

(t) Technical amendments.—The conference agreement includes the House provision.

D. PEER REVIEW ORGANIZATIONS

1. Contracts and Miscellaneous PRO Provisions (Section 9281(a), Section 4053, and Section 4054 of House bill; Sections 4041 (b), (d), (e), and (k) of Senate amendment)

Present law

(a) Contract Periods.—The Secretary contracts with private organizations (which then become peer review organizations) for the review of necessity, appropriateness, and quality of health care services furnished under Medicare. There are 54 such contracts.

The Secretary was required to enter into contracts with PROs for an initial period of 2 years, renewable every 2 years.

(b) Direct Discussion of Payment Denials with PROs.—PROs, after identifying a shortcoming in the provision of care, may take corrective action, including education, intensified review, alternate timing of review, and sanctions.

(c) Study of Effetiveness of Sending Denial Notices to Beneficiaries.—Peer review organizations are required to notify promptly the patient, and the practitioner or provider, when it makes a determination that payment should be denied under Medicare for services furnished or proposed to be furnished. This notice is required, even if the patient would not be liable to pay for the services.

(d) Contract Requirements.—Each of the 54 contracts between the Secretary and the PROs must contain certain similar elements. All of the contracts must specify objectives which are to be achieved during the contract period. These contracts must also define the structure, scope, and process of Medicare review performed by the PROs. All are expected to comply with relevant regulations and manual instructions.

The PRO contracts, however, may also contain certain differences. These differences may include different objectives, levels of preadmission review, and requirements for on-site or off-site review.

(e) Preference in Contracting with In-State Organizations.—The PRO contracts in 10 areas (Alaska, Delaware, District of Columbia, Guam/American Samoa, Idaho, Kentucky, Maine, Nebraska, South Carolina, and Vermont) are currently held by organizations based outside those areas.

(a) Contract Periods.—

Section 9281(a).—Authorizes the Secretary to extend existing PRO contracts for up to 6 months and to provide up to 2 one-year extensions of the contracts, in order to permit the Secretary an adequate time to complete contract renewal negotiations with

PROs and to provide for a staggered period of contract expiration dates.

Sections 4053 and 4054.—No provision.

(b) Direct Discussion of Payment Denials With PROs.—

Section 4053.—Provides that a PRO payment denial determination will not become final until 30 days after the date the PRO provides the physician or provider with reasonable notice of the proposed determination (including a specification of the criteria under which the determination is proposed to be made). Requires the PRO to provide the physician or provider with a reasonable and convenient opportunity during the 30-day period to discuss the proposed determination.

(c) Study of Effectiveness of Sending Denial Notices to Beneficiaries.—

Section 9281(a).—No provision.

Section 4054.—Requires the Secretary to conduct a study of the education effectiveness of PROs providing Medicare beneficiaries with payment denial notices in the instances when beneficiaries are not liable for paying for the provided services.

Requires the Secretary to report to the Congress on the results of the study by 2 years after the date of the enactment of this Act.

(d) Contract Requirements.—(1) Publication and Report Requirements.—[See Part A and B provision, "Publication of Policies"]

(2) Contractual Modifications.—No provision.

(e) Preference in Contracting with In-State Organizations.—(1) Additional Consideration.—No provision.

(2) Renewals.—No provision.

Effective date.—

Section 9281(a).—Applies to renewals occurring on or after the date of the enactment of this Act.

Section 4053.—Applies to determinations made on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act.

Section 4054.—Applies on or after the date of the enactment of this Act.

Senate amendment

(a) Contract Periods.—Provides that PRO contracts will be for an initial term of three years, renewable on a triennial basis thereafter.

(b) Direct Discussion of Payment Denials with PROs.—Prohibits a PRO from notifying the patient, fiscal intermediary, or carrier—whenever the PRO makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disproved—until the PRO has (1) made a preliminary notification to the practitioner or provider of the determination, and (2) provided the practitioner or provider an opportunity for discussion and review of the determination.

Provides that such discussion and review will not affect the rights of a practitioner or provider to a formal reconsideration (including discussion, and where amounts in question exceed specified thresholds, hearing and judicial review).

(c) Study of Effectiveness of Sending Denial Notices to Beneficiaries.—No Provision.

(d) Contract Requirements.—

(1) Publication and Report Requirements.—Requires the Secretary to publish in the Federal Register any new policy or procedure adopted by the Secretary that affects the performance of contract obligations by 45 days before the date on which the policy or procedure is to take effect.

Requires the Secretary to publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations and to provide opportunity for public comment on the criteria and standard.

Requires the Secretary to regularly furnish each peer review organization with a report that documents the performance of the organization in relation to the performance of other such organizations.

(2) Contractual Modifications.—Requires the Secretary—if a peer review organization is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the PRO—before requiring the PRO to carry out the additional function, to negotiate the necessary contractual modifications that provide for an appropriate adjustment (in light of the cost of the additional function) to the PRO's reimbursement.

(e) Preference in Contracting with In-State Organizations.—(1) Additional Consideration.—Requires the Secretary, if more than one qualified organization meets the specified criteria, to give additional consideration to an in-State organization. An in-State organization is defined as an organization with its primary place of business in (or which is owned by a parent corporation with its headquarters located in) the State in which the review will be conducted.

(2) Renewals.—Prohibits the Secretary from renewing a contract with any organization which is not an in-State organization unless the Secretary has first complied with the following requirements: (A) the Secretary is required to publish in the Federal Register, by 6 months before the contract period ends, the ending date and the time period in which an in-State organization may submit a proposal for that contract; and (B) the Secretary is prohibited, if one or more qualified in-State organizations submit a proposal within the period of time specified, from automatically renewing the current contract on a noncompetitive basis, and instead must provide for a competition in the same manner as for a new contract.

Effective date.—(a) Applies with respect to contracts entered into or renewed on or after the date of enactment of this Act. (b) Applies with respect to services or items furnished or to be furnished on or after the date of enactment of this Act. (d) Enactment. (e) Additional Consideration provision applies with respect to contracts entered into on or after the date of enactment of this Act. Renewals provision applies with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act.

Conference Agreement

(a) Contract Periods.—The conference agreement includes the Senate amendment with a modification to allow for staggered expi-

ration dates. The Secretary is authorized to allow extensions of current contracts for up to 24 months in order to achieve the staggering.

(b) Direct Discussion of Payment Denials.—The conference agreement includes the Senate amendment with a modification to provide that a payment denial would not be effective until 20 days after the PRO has given the required preliminary notice and an opportunity for discussion and review to the practitioner or provider.

(c) Study of Denial Notices.—The conference agreement does not include the House provision.

(d) Contract Requirements.—The conference agreement includes the Senate amendment with the modification that requires the Secretary to publish in the Federal Register any new policy or procedure adopted by the Secretary that substantially affects the performance of contract obligations by 30 days before the date on which the policy or procedure is to take effect. This paragraph shall not apply to the extent it is inconsistent with a statutory deadline.

(e) Preference in Contracting with In-State Organizations.—The conference agreement includes the Senate amendment with a modification. The conference agreement does not include the requirement that the Secretary give additional consideration to an in-State organization where more than one qualified organization meets the specified criteria.

2. Beneficiary Liability (Section 9281(b) of House bill; Sections 4041 (i) and (j) of Senate amendment)

Present law

(a) Physician Services.—If a Medicare service has been determined to be medically unnecessary or of substandard quality, a peer review organization (PRO) will issue a payment denial.

Physicians may not charge beneficiaries for services which are not medically necessary. In the case of non-assigned claims, if a physician bills a beneficiary for a service before receiving a denial notice from the PRO and the beneficiary pays the bill, the physician is required to make a refund within 30 days of receiving a denial notice. If the physician appeals the PRO decision on a timely basis, repayment would not be due until 15 days after receiving notice of an adverse appeal decision. However, physicians may not charge beneficiaries for services determined by a PRO to be of substandard quality.

(b) Hospital Deductible.—Hospitals may charge beneficiaries for the inpatient hospital deductible even if Medicare payment for inpatient care has been denied by the PRO.

(c) Patient Liability for Hospital Charges During Appeal of Discharge Notice.—The Omnibus Budget Reconciliation Act of 1986 provided that a hospital may provide a patient with a coverage denial notice if the hospital determines the patient no longer requires inpatient care and if the attending physician agrees with the hospital's determination.

If the attending physician disagrees with a hospital's determination, the hospital may request the PRO to review their determination. In this situation, under current law, the patient is not provided with a denial notice.

In cases where a patient does receive a denial notice, and requests PRO review, the PRO must review the determination and provide notice to the patient, attending physician and hospital, regardless of the patient's financial liability for continued stay. If a patient requests PRO review of the hospital's determination no later than noon on the first working day after receipt of the denial notice, the hospital must furnish the PRO, by close of business that day, with the records necessary to make a determination; and the PRO must provide notice by 1 full working day after it has received the request and the records.

If a patient has made a timely request and did not know or could not reasonably be expected to know that continued stay was unnecessary, the hospital may not charge the patient for hospital services before noon of the day after the receipt of the PRO's decision.

House bill

(a) Physician Services.—Prohibits physicians, in the case of assigned claims, from billing Medicare beneficiaries for services for which payment has been denied by a PRO on substandard quality grounds.

Specifies that physicians, in the case of assigned claims which were denied on the basis of medical necessity or substandard quality, must agree to refund amounts already collected.

Specifies that physicians, in the case of non-assigned claims which were denied on the basis of substandard quality, must refund amounts already collected (unless prior to delivery of the services the patient is informed that Medicare payment will not be made and he or she agrees to pay).

Makes conforming changes to statutory language relating to settlement of claims for benefits on behalf of deceased individuals.

(b) Hospital Deductible.—Indemnifies the individual in the case of any deductible and coinsurance paid if a PRO has denied Medicare payment for services.

Provides that no item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which Medicare payment may be made to or on behalf of the individual.

Effective date.—Applies to services furnished on or after January 1, 1988.

(c) Patient Liability for Hospital Charges During Appeal of Discharge Notice.—No provision.

Senate amendment

(a) Physician Services.—Similar provision, except that it requires the Secretary to provide for such timely amendments to carrier contracts and regulations, to such extent as may be necessary to implement the specified provisions, and except that it does not contain the conforming language relating to settlement of claims for benefits on behalf of deceased individuals.

Effective date.—Applies to items and services furnished on or after the date of enactment.

Hospital Deductible.—Prohibits hospitals from billing beneficiaries for any Part A deductible or copayments where the PRO has denied payments on the basis of substandards quality of service.

Effective date.—Applies to provider agreements as of the date of enactment of this Act.

(c) Patient Liability for Hospital Charges During Appeal of Discharge Notice.—Requires the PRO to notify the patient when the hospital requests review, in the case where the hospital has determined but the physician does not agree that the patient no longer requires inpatient care.

Provides that this notice shall be sufficient to require the PRO to review the validity of the hospital's determination and to require the hospital to provide the PRO with the required records.

Effective date.—Enactment.

Conference agreement

(a) Physician Services.—The conference agreement includes the House provision.

(b) Hospital Deductible.—The conference agreement includes the House provision.

(c) Patient Liability for Hospital Charges During Appeal of Discharge Notice.—The conference agreement includes the Senate amendment.

3. Norms and Education (Section 9281(c), Section 4051, and Section 4052 of the House bill; Sections 4041 (f) and (g) of the Senate Amendment)

Present Law

(a) Standards Applied by PROs.—PROs are required to apply professionally developed norms of care when reviewing the medical necessity or quality of services. Each PRO is required to develop its own norms of care.

(b) Off-Site Review.—PRO review in some instances, particularly in rural areas, is conducted off-site using written records, rather than in-person.

(c) Reports to Providers.—No provision.

(d) Education Activities.—PROs are evaluated by the HCFA regional offices, the HCFA central office and an independent contractor (known as "SuperPRO"). The Office of the Inspector General has performed audits and inspections of various aspects of the PRO program.

(e) Review of HMOs and CMPs.—The Consolidated Omnibus Budget Reconciliation Act of 1985 mandated review of services rendered by HMOs and CMPs. The Omnibus Budget Reconciliation Act of 1986 allowed the Secretary to contract for review of HMO and CMP services with entities other than PROs on a competitive basis, but such contracts are limited to no more than half of the States, covering no more than half of the total population of Medicare beneficiaries enrolled in risk-contracting plans.

HMOs and CMPs are currently reviewed for the purpose of determining whether the quality of their services meet professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings.

(f) Psychiatric and Physical Rehabilitation Services.—The PRO, to the extend necessary and appropriate to the performance of the contract, is required to use practitioners of, or specialists in, the areas of medicine (including denistry), or other types of medical care, who, to the maximum extent practicable, are engaged in the practices of their profession within the areas served by the PRO.

(g) Telecommunications Demonstration Projects.—PROs, after identifying a shortcoming in the provision of care, may take corrective actions including education, intensified review, alternate timing of review, and sanctions.

House bill

(a) Standards Applied by PROs.—

Section 9281(c).—Requires the norms of outpatient treatment used by PROs to consider social factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.

Section 4051.—No provision.

Section 4052.—No provision.

(b) Off-Site Review.—

Section 9281(c).—No provision.

Section 4051.—Requires the PRO to publish for a visit, at least quarterly, to each rural hospital reviewed by the PRO, by the physician or physicians responsible for the review of that hospital's services. The physicians are to meet with the medical and administrative staff of the hospital regarding the PRO's review of the hospital's Medicare services.

(c) Reports to Providers.—

Section 9281(c).—Requires the PRO to publish and distribute a report, at least twice each year, to providers and practitioners subject to review, on the types of cases or clinical circumstances in which the organization has frequently determined that: (1) inappropriate or unnecessary care has been provided, (2) services were rendered in an inappropriate setting, or (3) services did not meet professionally recognized standards of health care.

Sections 4051 and 4052.—No provision.

(d) Educational Activities.—

Section 9281(c).—Requires PROs to offer to meet, at least quarterly, with medical and administrative staff of each hospital (at the hospital or at a regional meeting) about the PRO's review of the hospital's Medicare services.

Section 4052.—Requires the Secretary, when evaluating the performance of PROs to place emphasis on the performance of PROs in educating providers and practitioners (particularly in rural areas) concerning the review process and criteria being applied by the PRO.

(e) Review of HMOs and CMPs.—No provision.

(f) Psychiatric and Physical Rehabilitation Services.—No provision.

(g) Telecommunications Demonstration Projects.—No provision.

Effective date.—

Section 9281(c).—Applies to PRO contracts entered into or renewed more than 6 months after the date of the enactment of this Act.

Section 4051.—Applies to PRO contracts as of January 1, 1988.

Section 4052.—Applies to PRO contracts as of January 1, 1988.

Senate amendment

(a) Standards Applied by PROs.—Requires the PRO, in establishing norms for review purposes, to take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and social factors that can affect the safety and efficacy of service delivery.

(b) Off-Site Review.—Requires a PRO to perform at least 20 percent of its review activities of rural hospitals each year on-site and to include as part of the on-site review, on-site review at each of the rural hospitals in the PRO's area.

(c) Reports to providers.—No provision.

(d) Educational activities.—Requires the PRO to arrange for several educational sessions per year at hospitals in the PRO's area for giving providers, practitioners, and hospital personnel with the criteria used in reviewing services.

(e) Review of HMOs and CMPs.—Adds a PRO review requirement. PROs are required to determine whether HMO or CMP enrollees have adequate access to health care services provided by or through the HMO or CMP (as determined, in part, by a survey of enrollees who have not yet used the HMO or CMP for such services).

Requires each PRO contract to require a beneficiary outreach program designed to apprise individuals receiving health care provided by HMOs or CMPs of the role of the peer review system, of the rights of the individual under the system, and of the method and purposes for contacting the PRO.

(f) Psychiatric and Physical Rehabilitation Services.—Requires the PRO, to the extent necessary and appropriate to the performance of the contracts to make arrangements, in the case of psychiatric and physical rehabilitation services, to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate).

(g) *Telecommunications Demonstration Projects.*—Requires the Secretary to establish demonstration projects to examine the feasibility of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and Medicare teaching hospitals. The Secretary may provide for payments to physicians consulted via video communications systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.

Effective date.—Applies to contracts entered into or renewed on or after the date of enactment of this Act.

Conference agreement

(a) Standards Applied by PROs.—The conference agreement includes the Senate amendment with a modification to require the PRO, in establishing norms for review purposes, to take into account other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.

(b) Off-Site Review.—The conference agreement includes the Senate amendment with a modification to require PROs to perform significant on-site review activities including on-site review at at least 20 percent of the rural hospitals in the PROs' areas.

(c) Reports to Providers.—The conference agreement includes the House provision.

(d) Educational Activities.—The conference agreement includes Section 9281(c) of the House provision with the modification that there would be meetings several times each year instead of at least quarterly.

(e) Review of HMOs and CMPs.—The conference agreement includes the Senate amendment.

(f) Psychiatric and Physical Rehabilitation Services.—The conference agreement includes the Senate amendment.

(g) Telecommunications Demonstration Projects.—The conference agreement includes the Senate amendment.

4. PRO Sanctions (Section 4055 of House bill; Section 4041(a) of Senate amendment)

Present law

(a–c) In General.—A physician or provider who is excluded from Medicare, on the basis of a finding by a peer review organization that the physician or provider failed to furnish medical care of acceptable quality, is entitled to administrative and judicial review. That review, under current law, takes place after the exclusion takes effect.

(d) Report on Improvement in Procedures for Imposing Sanctions.—If a PRO physician reviewer identifies quality problems, and has given the attending physician an opportunity to discuss the case, the PRO must initiate corrective action, such as education, intensified review, or alternate timing of review.

If such corrective interventions do not correct

If such corrective interventions do not correct the quality problem, the PRO can initiate the sanctions process, if there is a substantial violation or a gross and flagrant violation. The Secretary is authorized to impose sanctions based on the PRO's recommendation. The Secretary may exclude from the Medicare program or impose a monetary penalty against practitioners or providers.

There are specified procedures for the sanctions process, including appeal procedures. These procedures were recently revised.

House bill

(a) In General.—Entitles a provider or pracitioner excluded from the Medicare program to a hearing before an administrative law judge to determine whether the provider or practitioner will pose a serious risk to Medicare beneficiaries if permitted to continue furnishing services during the administrative or judicial review process. If the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to Medicare beneficiaries if permitted to continue furnishing services, the Secretary is prohibited from excluding the provider or practitioner from the Medicare program until after an administrative hearing on the merits of the exclusion.

(b) Transition for Current Cases.—Applies the preexclusion hearing provisions to providers or practitioners who received a notice of exclusion within 365 days before enactment, who have not exhausted the administrative remedies available to them under current law, and who request the hearing established under this provision within 90 days of enactment. For this purpose, the failure of a provider to have requested a hearing under current law on a timely basis would not be treated as having exhausted his appeal rights and would not preclude him from receiving this new hearing.

(c) Redeterminations in Certain Cases.—Requires the Secretary—If, in a hearing under (b) above, the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to Medicare patients if permitted to continue or resume furnishing services—to not exclude (or suspend the exclusion, if previously made) until the provider or practitioner has had an administrative hearing, not withstanding any failure by the provider or practitioner to request the hearing on a timely basis.

(d) Report on Improvement in Procedures for Imposing Sanctions.—No provision.

Effective data.—(a) Applies to determinations made by the Secretary on or after the date of the enactment of this Act, (b) and (c) apply on or after the date of the enactment of this Act.

Senate amendment

(a) In General.—No provision.

(b) Transition for Current Cases.—No provision.

(c) Redeterminations in Certain Cases.—No provision.

(d) Report on Improvement in Procedures for Imposing Sanctions.—Requires the Secretary to report to Congress, by one year after the date of enactment, on the improved procedures for imposing sanctions against a practitioner or person, established through agreement by the Health Care Financing Administration, the American Association of Retired Persons, the American Medical Association, and the HHS Office of the Inspector General.

Requires the report to set forth the improved procedures, describe the response of physicians and providers to the procedures, assess whether the procedures effect an appropriate balance between procedural fairness and the need for ensuring quality medical care, comment on the alternative provider-patient notification procedure contained in the agreement, and recommend whether

such procedures should apply to institutional providers of health care services.

Effective date.—Applies on or after the date of enactment of this Act.

Conference agreement

(a) In General.—The conference agreement includes the House provision with a modification that it is limited to physicians practicing in rural health manpower shortage areas (HMSAs) and in counties with populations of fewer than 70,000 people.

(b) Transition for Current Cases.—The conference agreement includes the House provision.

(c) Redetermination in Certain Cases.—The conference agreement includes the House provision.

(d) Report on Improvement in Procedures for Imposing Sanctions.—The conference agreement includes the Senate amendment.

5. Separate Funding Levels (Section 4041(c) of Senate Amendment)

Present law

PROs are required not only to review inpatient hospital care, but also to review care in certain other settings, such as certain ambulatory, post-acute, health maintenance organization, and competitive medical plan settings.

The Social Security Amendments of 1983 provided that there would be a funding floor for PRO review of inpatient hospital care—expenditures in a given fiscal year (for both direct and administrative costs) were not permitted to be lower than expenditures for the program in FY 1982, adjusted for inflation. The Consolidated Omnibus Budget Reconciliation Act of 1985 changed the funding floor to the level of expenditures for the program in FY 1986, adjusted for inflation. The Omnibus Budget Reconciliation Act of 1986 provided that any additional amounts for the costs of inpatient hospital care and any amounts for the costs of other review activities are required to be funded at an amount determined by the Secretary to be sufficient to cover the costs of specified review activities.

House bill

No provision.

Senate amendment

Provides that funding for inpatient hospital review activities shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1988 for direct and administrative costs (adjusted for inflation and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year) of such reviews.

Provides that funding for other review activities shall not be less in the aggregate than the amounts the Secretary determines to be sufficient to cover the costs of specified review activities.

Effective date.—Applies with respect to fiscal years beginning on or after October 1, 1988.

Conference agreement

The conference agreement includes the Senate amendment.

6. Provider Representation of Medicare Beneficiaries During Appeals of Peer Review Determinations (Section 4041(h) of Senate amendment)

Present law

Any beneficiary who is entitled to Medicare benefits and who is dissatisfied with a determination made by a PRO is entitled to a reconsideration of the determination by the PRO. In certain circumstances, the beneficiary has rights to an administrative hearing and judicial review.

The Omnibus Budget Reconciliation Act of 1986 prevents the Secretary from prohibiting providers from representing beneficiaries on appeal, if the providers waive the right to payments for the appealed services.

House bill

No provision.

Senate amendment

Extends the provisions from the Omnibus Budget Reconciliation Act of 1986 to PRO reconsiderations of their determinations.

Effective date.—Enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

E. Medicare and Medicaid Nursing Home Standards Reform Provisions

The conference agreement includes provisions amending the Medicare and Medicaid programs. Generally the provisions are identical. However, certain provisions apply exclusively to Medicare or Medicaid.

(1) Definition of Nursing Facilities (Section 9211(a) of Ways and Means; Section 4111(a) of Energy and Commerce; and Sections 4051(a) (1) and (2) of Senate amendment)

Present law

Under current law, in order for a skilled nursing facility to participate in the Medicare and Medicaid programs, it must meet certain requirements contained in 1861(j) of Medicare, often referred to as conditions of participation. These requirements detail standards of staffing, organization, and health and safety which SNFs must comply with in order to receive Medicare and/or Medicaid reimbursement.

At their option, Sates may also cover in their Medicaid plans intermediate care facility (ICF) services. Section 1905(c) of the Medicaid law defines an ICF as an institution which is licensed under State law to provide on a regular basis health-related care and services to individuals who do not require the degree of care and treatment provided by hospitals or SNFs but who because of their

mental or physical condition require care above the level of room and board that can be made available to them only through institutional facilities.

House bill

Section 9211(a).—Amends section 1861(j) of Medicare relating to the definition of skilled nursing facility (SNF), and requires that SNFs meet revised and expanded conditions of participation contained in a new section 1819 (described below).

Section 4111(a).—Amends the Medicaid statute by applying a single set of requirements for nursing facilities (other than intermediate care facilities for the mentally retarded). Adds a new section to the statute relating to requirements for nursing facilities (as described in (b) below).

Senate amendment

Amends section 1861(j) of Medicare to revise and expand the conditions of participation that a SNF must meet in order to participate in Medicare and/or Medicaid. Also amends Medicaid's definition of an ICF to apply certain of these revised conditions of participation to ICFs. Also provides that, for purposes of the provision of the bill requiring ICFs to meet certain of the revised conditions of participation, the term ICF includes any institution that meets the revised conditions of participation for SNFs.

Conference agreement

Conference agreement.—The conference agreement eliminates the distinction between SNFs and ICFs under the Medicaid program as of October 1, 1990.

(2) Requirements for Nursing Facilities (Section 9211(a) of Ways and Means; Section 4111(a) of Energy and Commerce; and Section 4051(a)(1) of Senate amendment)

Present law

To qualify for participation in Medicare, an institution must be a "skilled nursing facility" (SNF) as defined by Section 1961(j) of the Social Security Act. This section also lists requirements that Medicare SNFs (and by cross-reference, Medicaid SNFs) must meet. "SNF" is defined as an institution (or a distinct part of an institution) which has in effect a transfer agreement with one or more hospitals and which is primarily engaged in providing to impatients (1) skilled nursing care and related services for patients who require medical or nursing care, or (2) rehabilitation services for the rehabilitation of injured, disabled or sick persons.

The Medicaid law provides for separate requirements for ICFs. ICFs must meet (1) standards prescribed by the Secretary for the proper provision of care; (2) standards of sanitation and safety established by the Secretary in addition to those applicable to nursing homes under State law; and (3) requirements for protecting patients' personal funds.

House bill

Section 9211(a).—Defines "skilled nursing facility" to mean an institution (or a distinct part of an institution) which: (1) has a

transfer agreement with one or more hospitals under that part of the Medicare statute relating to agreements with providers: (2) is primarily engaged in providing to residents skilled nursing care and related services for residents who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons; and (3) meets the requirements for a SNF described in this bill relating to provisions of services, residents' rights and adminstration. Specifies that the term "skilled nursing facility" does not include any institution which is primarily for the care and treatment of mental diseases, but does include certain Christian Science SNFs, and certain institutions on Indian reservations.

Section 4111(a).—Defines "nursing facility" to mean an institution (or a distinct part of an institution) which: (1) is primarily engaged in providing to residents nursing care and related services for residents who require medical or nursing care; (2) rehabilitation services for the rehabilitation of injured, disabled or sick persons; or (3) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities; and (4) meets the requirements for a nursing facility relating to provision of services, residents' rights, administration and preadmission screening. Specifies that the term "nursing facility" also includes certain facilities located on certain Indian reservations.

Senate amendment

Defines the term "skilled nursing facility" to mean an institution (or a distinct part of an institution) that has in effect a transfer agreement with one or more hospitals having Medicare provider agreements and that meets the revised conditions of participation, as described here and below.

Among other things, includes in the revised conditions of participation a requirement that a SNF be primarily engaged in providing to inpatients (1) skilled nursing care and related services for patients who require medical or nursing care, or (2) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and is not primarily for the care and treatement of mental diseases.

Conference agreement

The conference agreement includes both House provisions.

(3) Requirements for Assuring Quality of Care Relating to Provision of Services (Section 9211(b) of Ways and Means; Section 4111(b), 4112 and 4113(a)(4) of Energy and Commerce; and Section 4051(a)(1) of Senate amendment)

Present law

Current Medicare and Medicaid statutes require a SNF to: (1) have policies developed with the advice of a group of professional personnel to govern the provision of services, (2) have physicians supervising the care of its residents, (3) maintain clinical records on all residents, (4) provide 24-hour nursing care, (5) provide appropriate methods and procedures for the dispensing and administer-

ing of drugs and biologicals, (6) have in effect a utilization review plan, (7) be licensed pursuant to State law, (8) have in effect an overall plan and budget, (9) cooperate in a program which provides for a regular program of independent medical evaluation and audit of the patients in the facility, (10) establish a system to prevent the commingling of resident's funds, (11) meet certain health and safety requirements, and (12) meet such other conditions relating to the health and safety of individuals furnished services in SNFs or relating to the physical facility as the Secretary may find necessary.

There are currently no nurse aide training requirements in the Medicare program. Statutory requirements are elaborated upon in regulations at 42 CFR Part 405 Subpart K. The rights of residents in regard to transfer and discharge are not defined in the Medicare statute. The regulations specify that a transfer or discharge can occur only for medical reasons and for reasons of a resident's welfare or the welfare of other residents.

Under the Medicaid staute, the Secretary is given the authority to prescribe standards for care, safety and sanitation in ICFs. They are specified in regulations at 42 CFR Part 442, Subpart F, and include requirements covering the provision of health services; the supervision of residents (for example, the facility must have a registered or practical or vocational nurse on duty full time, 7 days a week, during the day); the development and implementation of a written health plan for each resident, provide rehabilitiative and social services; provide an activities program; and provide for physician visits at least once every 60 days (with certain exceptions). The regulations also specify requirements for administration and residents' rights. There is no specific requirement for nurse aide training and testing programs, or for annual or regular resident assessments. In general, the right of ICF residents are not defined in the Medicaid statute. The regulations specify that a transfer or discharge may occur for medical reasons; for reasons of the resident's welfare or the welfare of others, and for nonpayment except as prohibited by the Medicaid program.

House bill

Section 9211(b).—

(a) Requirements Relating to Provision of Services.—Creates a new section 1819 of the Medicare Part A statute. Provides for new requirements (as described below) to be added to the section of the Medicare statute relating to provision of services.

(1) Quality of Life.—Requires a SNF to care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident. Also, see sections (2) Scope of Services under Plan of Care, and (4) Provision of Services and Activities, described below.

(2) Scope of Services under Plan of Care.—Requires a SNF to provide services that will attain or maintain the highest possible mental and psychosocial well-being, as well-as physical well-being of each resident, in accordance with a written plan of care which (A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met; and (B) is initially prepared by a team which includes the attending physician and a pro-

fessional registered nurse with responsibility for the resident, and is periodically reviewed and revised by such term after each assessment (as described below).

(3) Requirement for and Certification of Resident's Assessment.—Requires a SNF to designate appropriate qualified staff to conduct a comprehensive accurate assessment of each resident's capacity to perform daily life functions. Requires the assessment to document significant impairments in functional capacity and be based on a uniform minimum data set specified by the Secretary (as set forth in the provison of this bill relating to specification of the data set for resident assessments). Requires the assessment to be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Requires that each individual who completes a portion of the assessment sign and certify as to the accuracy of that portion of the assessment.

(A) Penalty for Falsification of Resident's Assessment.—Provides that a SNF is subject to a civil money penalty of not more than $1,000 with respect to each assessment and not more than $10,000 in total, if it willfully and knowingly causes an individual to certify a material and false statement in a resident assessment. Requires the Secretary to provide for the imposition of civil money penalties in a manner similar to that for the imposition of such penalties under the current Social Secretary Act relating to the exclusion of individuals convicted of Medicare or Medicaid related crimes.

(B) Use of Independent Assessors.—Specifies that if a State determines (as a result of the survey and certification process or otherwise) that there has been a knowing and willful certification of false assessments, the SNF must provide for such assessments to be conducted and certified by individuals who are independent of the facility.

(C) Frequency of Assessment.—Requires that an assessment be conducted (i) upon admission for each individual admitted on or after Oct. 1, 1990; (ii) promptly after a significant change in the resident's physical or mental condition; and (iii) in no case less often than once every 12 months. Requires that the assessment be reviewed at least every 3 months. Requires that an assessment be conducted not later than Oct. 1, 1990 for each resident of the facility on that date.

(D) Use of Assessment.—Requires that the results of the assessment be recorded and maintained in a standard form in the clinical records of the resident and that the assessment form the basis of the planning, delivering and revising of the resident's plan of care.

(E) Coordination of Assessment.—Requires that the assessments be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

(4) Provision of Services and Activities.—

(A) General Requirements.—Requires that to the extent needed to fulfill all plans of care described in the provision relating to scope of services, a SNF must provide, directly or under arrangements (or, with respect to dental services, under agreement) with others, for: (i) sufficient nursing, physician, and specialized rehabilitative

services to attain or maintain the highest possible physical, mental and or psychosocial well-being of each resident; (ii) medically-related social services to attain or maintain the highest possible physical, mental and psychosocial well-being of each resident; (iii) pharmaceutical services that assure the accurate acquiring, receiving, dispensing and administering of all drugs and biologicals to meet the needs of the resident; (iv) dietician services that assure that the meals meet the daily nutritional and special dietary needs of each resident; (v) an on-going program of activities designed to meet the interests and the physical, mental health, and psychosocial needs of each resident; and (vi) routine and emergency dental services to meet the needs of each resident. Requires that the services provided or arranged for by the SNF be of adequate quality. Specifies that (vi) does not require a SNF to provide or arrange for dental services without additional charge.

(B) Qualified Providers.—Requires that services described in (A)(i), (ii), (iii), (iv) and (vi) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) Required Nursing Care.—(i) Except as provided in (D) below, requires a SNF to provide 24 hour nursing service which is sufficient to meet nursing needs of its residents and must employ the services of a registered professional nurse at least during the day tour of duty (of at least 8 hours a day) 7 days a week.

(D) Facility Waivers.—In cases in which the above provision requires that a SNF engage the services of a registered professional nurse for more than 40 hours a week, authorizes the Secretary to waive the requirement described if (1) the SNF is in a rural area and the supply of skilled nursing facility services in that area is not sufficient to meet the needs of individuals residing in that area, (2) the SNF has one full-time registered professional nurse who is regularly on duty 40 hours a week, and (3) the SNF either has only patients whose physicians have indicated that their patients do not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at the SNF as may be indicated as necessary by the physician to provide needed skilled nursing services on days when the regular full-time registered professional nurse is not on duty. Requires annual renewal for the waiver.

(5) Required Training of Nurse Aides.—

(A) Training, Testing and Competency.—Requires a SNF to provide (by itself or through others) training under a training and testing program that is approved by the State under Medicare requirements (as added by this bill) for nurse aides used by the SNF, except those whom the SNF certifies have completed successfully such a program or a testing program that meets the requirements of this bill. Requires the SNF to provide an approved testing program for nurse aides employed before July 1, 1989, and such preparation as may be needed to complete successfully such a program as will permit individuals at least 2 opportunities to complete it by Jan. 1, 1990. Prohibits a SNF from first employing an individual after June 30, 1989, as a nurse aide for more than 3 months unless the individual has successfully completed a training and testing

program, or a testing program, approved by the State under Medicare requirements (as amended by this bill).

Prohibits a SNF from using an individual, first employed before July 1, 1989, as a nurse aide on or after Jan. 1, 1990, unless the individual has successfully completed an approved training and testing program, or an approved testing program. Prohibits a SNF from using an individual as a nurse aide or providing services of a type for which the individual has not demonstrated competency. Also prohibits the SNF from using such an individual as an aide unless the facility has inquired of the State registry established under this bill as to information concerning the individual's involvement in resident neglect or abuse. Provides that if the SNF uses an individual as a nurse aide and dismisses the individual because of a specific finding that the aide was involved in resident neglect or abuse, the SNF shall report this finding to the registry.

(B) Retraining.—Provides that a SNF require any individual who has ceased providing direct patient care as a nurse aide for more than 24 consecutive months to complete a training and testing program, approved by the State under Medicare requirements (as amended by this bill).

(C) On-Going Training.—Requires the SNF to have an ongoing program of training and performance review for nurse aides, including training for individuals providing special care to residents such as those with cognitive impairments.

(D) Miscellaneous.—No provision.

(E) Definition of Nurse Aide.—Defines "nurse aide" to mean any individual providing nursing or nursing-related services (whether on a full-time, temporary, per diem, or other basis) to residents in a SNF, but does not include an individual who is a physician, registered professional nurse, licensed practical nurse, licensed or certified social worker, or volunteers who provide services without monetary compensation.

(F) Definition of Licensed Health Professional.—No provision.

(6) Physician Supervision and Clinical Records.—Provides that a SNF require that the medical care of every resident be provided under the supervision of a physician; that it provide for having a physician available to furnish necessary medical care in case of an emergency; and that it maintain clinical records on all residents, which include the plan of care and the resident's assessment.

(7) Required Social Services.—Requires that SNFs provide medically-related social services to attain or maintain the highest possible physical, mental, and psychosocial well-being of each resident.

Sections 4111(b), 4112, and 4113(a)(4).—

(a) Requirements Relating to Provision of Services.—Provides for new requirements (as described below) to be included under new section 1921 of the Medicaid law relating to provision of services.

(1) Quality of Life.—Identical provision except applies to nursing facilities under Medicaid. Also, see sections (2) Scope of Services under Plan of Care, and (4) Provision of Services and Activities, described below.

(2) Scope of Services under Plan of Care.—Similar provision except requires a nursing facility to provide services and activities to attain or maintain the highest possible physical and mental health, and psychosocial well-being, of each resident in accordance

with a written plan of care which (A) is initially prepared by the attending physician or other licensed health professional with the participation of the resident or the resident's family or legal representative; (B) is periodically reviewed and revised by the attending physician or other licensed health professional after each assessment (as described below); and (C) describes the medical, nursing, mental health and psychosocial needs of the resident and how much needs will be met.

(3) Requirement for and Certification of Resident's Assessment.—Similar provision except requires a nursing facility to conduct a standardized, reproducible assessment of each resident's functional capacity through the use of an instrument which is specified by the State (under its Medicaid State plan) and which, upon completion, describes the resident's capability to perform daily life functions. Requires the registered professional nurse to sign and certify the accuracy of the assessment.

(A) Penalty for Falsification of Resident's Assessment.—Provides for a civil money penalty of not more than $1,000 for an individual who willfully and knowingly certifies a material and false statement in a resident assessment. Provides for a civil penalty of not more than $5,000 for an individual who willingly and knowingly causes another individual to certify a material and false statement in a resident assessment.

(B) Use of Independent Assessors.—No provision.

(C) Frequency of Assessment.—Similar provision except requires the assessment to be conducted not later than October 1, 1991, for each resident of the facility as of that date.

(D) Use of Assessment.—No provision.

(E) Coordination of Assessment.—No provision.

(4) Provision of Services and Activities.—

(A) General Requirements.—Similar provision, except applies to facilities under Medicaid. (i) Similar provision but requires the provision of nursing services, physicians' services, and specialized rehabilitative services to attain and maintain the highest possible physical, mental and psychosocial well-being of each resident; (ii) same provision; (iii) similar provision except specifies pharmaceutical services including procedures; (iv) same provision; (v) similar provision except specifies that the activities meet the interest and the physical and mental health and psychosocial well-being of each resident; (vi) similar provision except specifies routine and emergency dental services (to the extent covered under the State plan) to meet the needs of each resident. Requires that the services provided or arranged for by the facility must meet professional standards of quality.

(B) Qualified Providers.—Identical provision.

(C) Required Nursing Care.—(i) Requires nursing facilities to provide by Oct. 1, 1990, 24 hour licensed nursing services sufficient to meet the nursing needs of their residents and the use of a registered nurse for at least 8 consecutive hours a day, 7 days a week. (ii) Requires nursing facilities with at least 90 beds to use by Oct. 1, 1992, the services of a registered professional nurse for at least 16 hours a day, 7 days per week.

(D) Facility Waivers.—Provides waivers for (i) the 24-hour licensed nursing requirement for facilities with less than 90 beds

and designated as ICFs; (ii) the registered nurse requirement over the week-end for certain facilities; and (iii) the second shift registered nurse requirement for certain larger nursing facilities in rural areas. For certain facilities currently designated as ICFs, allows the Secretary to delay the staffing requirements upon the request of a State with more ICFs than SNFs, and if the Secretary determines that compliance is impracticable. States qualifying for this waiver would not have to bring their ICFs into compliance with the nursing staff requirements until Oct. 1, 1991, and for small ICFs, until Oct. 1, 1992. Furthermore, States qualifying for a waiver of additional RN care for large ICFs would not have to bring these facilities into compliance until Oct. 1, 1993.

Provides that the Secretary may grant waivers only upon the request of a State on behalf of a facility and only for a period of up to six months. Provides that waivers may be renewed upon the request of a State and only for additional periods not to exceed six months.

(5) Required Training of Nurse Aides.—

(A) Training, Testing and Competency.—Prohibits a facility from employing an individual, who is not a licensed health professional (as defined below), as a nurse aide on or after Jan. 1, 1990 unless the individual: (i) is competent to provide such services as a result of completing a training program recognized and approved by the State (under Medicaid requirements as amended by this bill) or (ii) is enrolled in, and making timely progress in completing, such a training program, the completion of which assures that the individual is competent to provide such services, and with respect to providing specific nursing or nursing-related services, is competent to provide those services.

(B) Retraining.—Similar provision except specifies that the individual is not considered to have completed a training program if there has been a continuous period of 24 consecutive months since completing the program during which the individual did not perform nursing or nursing-related services for compensation.

(C) On-Going Training.—Requires a nursing facility to provide such regular performance review and regular in-service education as assures that an individual used as a nurse aide is competent to provide those services.

(D) Miscellaneous.—No provision.

(E) Definition of Nurse Aide.—Similar provision, except does not include volunteers in the list of professionals who are not nurse aides.

(F) Definition of Licensed Health Professional.—Defines licensed health professional as a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed social worker.

(6) Physician Supervision and Clinical Records.—Similar provision except applies to nursing facilities under Medicaid and requires that the health care of the facility of every resident be provided under the supervision of a physician.

(7) Required Social Services.—Requires that a nursing facility with more than 120 beds have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision

of social services. Also requires that nursing facilities provide medically-related social services to attain or maintain the highest possible physical, mental, and psychosocial well-being of each resident.

(a) Requirements Relating to Provision of Services.—Revises and expands existing conditions of participation and requirements for SNFs. Also requires that ICFs meet certain of these revised conditions.

(1) Quality of Life.—Identical provision, except applies to SNFs and ICFs. Also requires institutions to meet the needs of each resident for necessary medical, nursing, restorative, and psychosocial services that permit the resident to attain and maintain the highest feasible level of functioning in the least restrictive environment possible in light of his or her condition.

Further requires the institution to maintain a quality assessment and assurance program that meets the following requirements:

(A) A committee, consisting, of the director of nursing services, a physican designated by the institution, and at least 3 other members of the staff, meets at least quarterly to identify issues for which quality assessment and assurance activities are necessary.

(B) One member of this committee is assigned primary responsibility for ongoing coordination and oversight of quality assessment and assurance activities.

(C) The committee seeks comments and suggestions from residents and staff on quality assessment and assurance issues (and maintains a permanent record of the comments and suggestions received).

(D) Issues addressed by the committee at least annually shall include: (1) prevention measures and the occurance of infectious diseases; (2) the promotion of behavioral, cognitive, and social functioning; (3) quality of life; (4) use of medications (including a review of each resident's drug regimen); (5) use of chemical and physical restraints; (6) appropriations, adequacy, and implementation of nursing plans; (7) frequency and seriousness of accident reports (and measures for preventing accidents); and (8) frequency and resolution of residents' grievances and compliants (and mechanisms for monitoring the satisfaction of residents with the quality of care.

(E) The committee develops and implements appropriate plans of action to correct identified quality deficiencies.

(F) The committee (1) documents the time expended by it in quality assessment and assurance activities and the issues that it has addressed, and (2) makes such documentation available, upon request, to the Secretary and to the appropriate agency resonsible for conducting certification surveys of the institution.

(G) The confidentiality of the committee records must be maintained, except to the extent the committee must make such documentation available to the Secretary and survey agency.

(H) In determining whether an institution complies with these requirements, the Secretary and the appropriate State survey agency shall take into account the degree to which the committee identified and acted upon any deficiencies found in the institution.

(2) Scope of Services under Plan of Care.—Requires a SNF to provide services to maintain or improve each resident's mental and psychosocial well-being, as well as physical well-being, in accordance with a written plan of care which (A) is developed, to the

extent practicable, in consultation with the resident (or his or her legal representative) and by a multidisciplinary team coordinated by a registered professional nurse, (B) is periodically reviewed and revised after each assessment (as described below), and (C) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met.

Also requires SNFs and ICFs to provide for an activities program, directed by a qualified professional, to encourage selfcare, resumption of normal activities, and maintenance of an optimal level of psychosocial functioning in a manner appropriate to the needs and interests of each resident.

(3) Requirement for and Certification of Resident's Assessment.—Requires that SNFs and ICFs provide for each patient accurate assessments that include (but not be limited to) the identification of medical problems and the assessment of physical, mental, and psychosocial functioning. Requires that the assessment utilize a minimum data set of core elements and common definitions and guidelines for utilization specified by the Secretary (in accordance with guidelines established by the Secretary). Also requires that the assessment be coordinated by a registered professional nurse and carried out in consultation with appropriate health care providers (such as licensed practical nurses, nursing aides, activities professionals, social workers, pharmacists, nutritionists, mental health professionals, and rehabilitation therapists). Further requires that the assessment be available for review and comment by the resident in accordance with the resident's right to participate in developing his or her plan of care.

(A) Penalty for Falsification of Resident's Assessment.—No provision.

(B) Use of Independent Assessors.—No provision.

(C) Frequency of Assessment.—Requires a preliminary assessment of each resident within 48 hours of admission. Also requires a comprehensive assessment of each resident within 21 days of admission, at least annually thereafter, and whenever there is a significant change in the resident's mental or physical condition.

(D) Use of Assessment.—Requires that the result of the assessment be recorded in the clinical records of the resident and be used in formulating, reviewing, and revising the resident's plan of care.

(E) Coordination of Assessment.—Requires that the preliminary assessment be coordinated with any State-required preadmission screening to the maximum extent practicable in order to avoid duplicative testing and effort.

(4) Provision of Services and Activities.—

(A) General Requirements.—Requires that staffing of SNFs and ICFs be at a level to meet the needs of its residents. Requires that an institution's compliance with this requirement be determined by the survey and certification process and not by any reports required to be filed by the institution on a quarterly or other periodic basis. Prohibits the Secretary or State from requiring an institution to submit a quarterly staffing report on or after the date of enactment of the bill.

Also requires that a SNF establish appropriate methods and procedures for the dispensing and administering of drugs and biologicals.

(B) Qualified providers.—No provision.

(C) Required Nursing Care.—Except as provided in (D) below, requires SNFs and IDFs to provide 24-hour licensed nursing service that is sufficient to meet nursing needs in accordance with the policies of the institution and to have at least one registered professional nurse employed full-time.

(D) Facility Waivers.—Authorizes a State to waive the licensed nursing care requirement if: (1) the institution demonstrates to the State's satisfaction that it has been unable, despite diligent efforts (including offering wages at the community prevailing rate), to recruit appropriate personnel, and (2) the State determines that a waiver will not endanger the health and safety of individuals staying in the institution. Requires that a waiver be subject to annual renewal and to review by the Secretary (under the Secretary's authority to conduct validation surveys) and shall be accepted by the Secretary to the same extent as is the State's certification of the institution.

(5) Required Training of Nurse Aides.—

(A) Training, Testing and Competency.—Requires a SNF and ICF (by itself or through others) to provide training for individuals hired or utilized as nurse aides under a program that is approved by the State. Applies this requirement to individuals hired on or after Jan. 1, 1990. Prohibits a SNF or ICF from employing or utilizing any individual as a nurse aide for more than 6 months unless the individual has successfully completed a training and competency evaluation program that is recognized and approved by the State. Prohibits a SNF and ICF from employing an individual, hired before Jan. 1, 1990, as a nurse aide on or after the date that is 3 years after enactment unless the individual has successfully completed an approved competency evaluation program. Requires institutions to provide these individuals at least three opportunities to complete the program and the preparation necessary for successful completion.

Prohibits institutions from permitting any nurse aide to provide unsupervised patient care of a type for which the aide has not demonstrated competency.

(B) Retraining.—Similar provision except (1) specifies that the individual complete an "appropriate" training and competency evaluation program; and (2) does not specify that the period is 24 "consecutive" months.

(C) On-Going Training.—Identical to Ways and Means provision.

(D) Miscellaneous.—Requires SNFs and ICFs to provide each new nurse aide an orientation to the facility and to the residents for whom the aide provides care (in addition to the general initial training and competency testing program).

Also requires institutions to assure that all aides are able to read, speak, and write sufficiently to perform assigned duties.

(E) Definition of Nurse Aide.—No provision.

(F) Definition of Licensed Health Professional.—No provision.

(6) Physician Supervision and Clinical Records.—Requires for SNFs that the health care of every resident be provided under the supervision of a physician and that a physician be available to furnish necessary medical care in case of emergency. Also requires

SNFs and ICFs to maintain clinical records (on a discipline-specific or interdisciplinary basis) on all residents.

(7) Required Social Services.—Requires that a SNF or ICF with more than 120 beds have at least one social worker (with at least a bachelor's degree in social work) employed full-time. Authorizes the Secretary to waive this requirement if: (1) the institution demonstrates to the Secretary's satisfaction that it has been unable, despite diligent efforts (including offering wages at the community prevailing rate), to recruit appropriate personnel, and (2) the Secretary determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the institution. Requires that a waiver be subject to annual renewal.

Conference agreement

The conference agreement includes both House provisions with an amendment incorporating Senate provisions:

(1) to require facilities to maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and develops and implements appropriate plans of action to correct identified quality deficiencies;

(2) to require that written plans of care be initially prepared, to the extent practicable, with the participation of the resident or the resident's family or legal representative;

(3) to require that the residents' assessments include the identification of medical problems;

(4) to require the on-going program of activities to be directed by a qualified professional;

(5) to require nurse aides to have completed a training and competency evaluation (instead of testing) program, or a competency evaluation (instead of testing) program. The conferees struck the term "testing" and replaced it with the words "competency evaluation" to emphasize that such programs shall include manual and oral evaluation; and

(6) to require facilities with more than 120 beds to employ full-time at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications).

The conference agreement retains Medicare's current law nurse staffing and registered professional nurse (RN) requirements and waiver provisions applying to the RN requirement. For Medicaid, the conference agreement requires as of October 1, 1990, that all SNFs and ICFs, in urban and rural areas, provide 24-hour licensed practical nurse (LPN) care 7 days a week, with at least one RN employed 7 days a week, 8 hours a day. The conference agreement authorizes States to waive the RN and LPN requirements if (1) the institution demonstrates to the satisfaction of the State that it has been unable, despite diligent efforts (including offering wages at the prevailing rates at other nursing facilities), to recruit appropriate personnel, and (2) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the institution. The conference agreement also author-

izes the Secretary to exercise States' authority to grant such waivers if the Secretary finds, based on a clear pattern and practice of allowing waivers in the absence of diligent efforts, that a State had abused its discretion.

The conference agreement also requires facilities, in the provision defining scope of services, to provide services to attain or maintain the highest practicable physical, mental, and psychological well-being of each resident.

In addition, the conference agreement includes, in the resident assessment requirements that facilities participating in Medicaid must meet, preadmission screening requirements for mentally ill and mentally retarded individuals.

(4) Requirements Relating to Residents' Rights (Section 9211(b) of Ways and Means; Section, section 4111(c) of Energy and Commerce; and Sections 4051(a) (1), (2), and (4) and 4051(e) of Senate amendment)

House bill

Section 9211(b).—

(a) General Description.—Amends the Medicare statute relating to SNFs to include residents' rights as specified below. Requires that a SNF protect and promote these rights, including each of the following specific rights.

(b) General Rights.—

(1) Specified Rights.—

(A) Free Choice.—Provides for the right to choose a personal attending physician, to be fully informed in advance about care and treatment, to participate, where appropriate, in planning care and treatment, and to be fully informed in advance of any changes in care or treatment that may affect the resident's well being.

(B) Free from Restraints.—Provides that a resident has the right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms. Restraints may only be imposed to ensure the physical safety of the resident or other residents and only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used, except in emergency circumstances, specified by the Secretary, until such a physician order can reasonably be obtained.

(C) Privacy.—Provides that a resident has the right to privacy with regard to accommodations, medical treatment, and written and telephonic communications. Specifies that this does not mean that the facility is required to provide a private room.

(D) Confidentiality.—Provides that a resident has the right to confidentiality of personal and clinical records.

(E) Accommodation of Needs.—Provides that a resident has the right to reside and receive services with reasonable accommodations of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and to receive notice before the room or roommate of the resident is changed.

(F) Grievances.—Provides that a resident has the right to voice grievances with respect to treatment or care that is (or fails to be)

furnished, without discrimination or reprisal for voicing the grievances and the right to resolution promptly by the facility of grievances the resident may have with respect to the behavior of other residents.

(G) Participation in Resident and Family Groups.—No provision.

(2) Notice of Rights and Services.—Requires a SNF to: (A) tell each resident of his or her legal rights during the stay at the facility; (B) provide to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights); and (C) inform each resident, in writing before or at the time of admission and periodically during the resident's stay, of rights and of services available in the facility and or related charges for such services, including any charges for services not covered under Medicare or Medicaid, or not covered by the facility's basic per diem rate.

(3) Rights of Incompetent Residents.—Requires that in a case of a resident adjudged to be incompetent under State law, for the rights of the resident described in this provision to devolve upon, and be exercised by, the person appointed under State law to act on the resident's behalf.

(4) Use of Psychotropic Drugs.—No provision.

(c) Transfer and Discharge Rights.—

(1) In General.—Prohibits a SNF from involuntarily transferring or discharging a resident unless: (A) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility; (B) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; (C) the safety of individuals in the facility is endangered; (D) the health of individuals in the facility would otherwise be endangered; (E) the resident has failed, after reasonable and appropriate notice, to pay (or to have Medicare pay on the resident's behalf) an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with the Medicare statute; or (F) the facility ceases to operate or participate in the program which reimburses for the resident's care. Requires for (A) through (D) that the transfer or discharge be documented by the resident's physician in the resident's clinical record.

(2) Pre-Transfer and Pre-Discharge Notice.—(A) Requires that before effecting an involuntary transfer or discharge of a resident a SNF must: notify the resident (and the guardian or an immediate relative of the resident, if known) of the transfer or discharge and the reasons; record the reasons in the resident's clinical record (including required documentation); and provide timely notice including certain required information. (B) Requires that the notice be provided at least 30 days in advance of a resident's transfer or discharge except when the safety or health of individuals in the facility are endangered or where the resident's health improves sufficiently to allow a more immediate transfer or discharge, or where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs. (C) Requires each notice to include for transfers or discharges on or after Oct. 1, 1989, notice of the resident's right to appeal the transfer or discharge as provided under

the Medicare statute as amended by this bill, and the name, mailing address and telephone number of the State long-term care ombudsman.

(3) Orientation.—Requires a SNF to provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(4) Notice on Bed-Hold Policy and Readmission.—No provision.

(d) Access and Visitation Rights.—Requires a SNF to: (1) permit immediate access to any resident by officially designated representatives of the Secretary or the State, by officially designated ombudsman, or by the resident's individual physician; (2) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident; (3) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; (4) permit reasonable access to a resident by any entity or individual that provides health, social, legal or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and (5) permit representatives of the State ombusdsman, with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's medical, nursing, and social records.

(e) Equal Access to Quality Care.—

(1) General Application.—Requires a SNF to establish and maintain identical policies and practices regarding transfer, discharge, and covered services for all individuals regardless of source of payment.

(2) *Admissions.*—(A) *In General.*—Prohibits a SNF from requiring individuals applying to reside or residing in the facility to waive their rights to benefits under Medicare or Medicaid. Prohibits a SNF from requiring oral or written assurance that such individuals are not eligible for, or will not apply for, Medicare or Medicaid benefits. Requires the SNF to prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by Medicare or Medicaid. Also prohibits a SNF from requiring a third party guarantee of payment to the facility as a condition of admission to, or continued stay in, the facility.

(B) Construction.—Specifies that the admissions provision above does not prevent States or political subdivisions of States from prohibiting discrimination against individuals who are entitled to Medicaid with respect to admissions practices of skilled nursing facilities. Provides that it also does not prevent a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care of the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(f) Protection of Resident Funds.—(1) Requires a SNF, upon written authorization by a resident, to accept responsibility for holding, safeguarding, and accounting for the resident's personal funds, and providing each resident access to such funds and records of such funds. (2) Requires the SNF to establish and maintain a system that assures a full and complete accounting (not less often than

quarterly) of each resident's personal funds, and that establishes a separate account or accounts for such funds in order to prevent any commingling of such funds with institutional funds or with the funds of any person other than another resident. (3) Requires that upon a resident's death, the SNF promptly convey the resident's personal funds (and a final accounting of the funds) to the individual administering the resident's estate.

(g) Right to Examine Results of Survey.—No provision.

Section 4111(c).—

(a) General Description.—Similar provision except applies to requirements for nursing facilities under Medicaid.

(b) General Rights.—

(1) Specified Rights.—

(A) Free Choice.—Provides that a resident has the right to choose a personal attending physician, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(B) Free from Restraints.—Similar provision, except does not specifically provide for the use of restraints to treat for medical symptoms or their use in emergency circumstances.

(C) Privacy.—Similar provision except adds that a resident has the right to privacy with regard to visits, and meetings of family and of resident groups.

(D) Confidentiality.—Identical provision.

(E) Accommodation of Needs.—Provides that a resident has the right to reside and receive services in the least restrictive environment, except where the health and safety of the individual or other residents would be endangered.

(F) Grievances.—Provides that a resident has the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances.

(G) Participation in Resident and Family Groups.—Provides that a resident has the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(2) Notice of Rights and Services.—Requires a nursing facility to: (A) provide to each resident, upon reasonable request, a written statement of the resident's legal rights during the stay at the facility (which is updated upon changes in such rights); (B) inform each resident who is entitled to medical assistance under Medicaid at the time of admission to the facility or, if later, at the time the resident becomes eligible for Medicaid, of the items and services that are included in the nursing facility services under Medicaid and for which the resident may not be charged (except as permitted under the Medicaid statute), and of those other items and services that the facility provides and for which the resident may be charged and the amount of the charges for such items and services. Also requires that the nursing facility inform each Medicaid resident of changes in the charges imposed for items and services; (C) inform in writing residents not entitled to Medicaid, before or at the time of admission and periodically during the resident's stay, of

services available in the facility and or related charges for such services, including any charges for services not covered by the facility's basic per diem charge; and (D) upon admission, provide to each resident and each resident's spouse (if any) the written notice of the resident's and spouse's obligations. (The notice is to be developed and distributed by the State under Medicaid requirements of the State created by this bill.)

(3) Rights of Incompetent Residents.—Similar provision. Requires that for a resident adjudged incompetent under the laws of a State, the rights of the resident under this provision to be devolved upon, and to the extent judged necessary by a court of competent jurisdiction, be exercised by the person appointed under State law to act on the resident's behalf.

(4) Use of Psychotropic Drugs.—Requires that psychotropic drugs be administered only on physician orders and only as part of a plan included in the written plan of care designed to eliminate or modify symptoms for which the drugs are prescribed and only if, at least annually, an independent consultant in psychopharmacology review the appropriateness of the drug plan of each resident receiving such drugs.

(c) Transfer and Discharge Rights.—

(1) In General.—Similar provision, except applies to nursing facilities under Medicaid. Requires that for the cases described in (A) through (D) that the basis for the transfer or discharge be documented in the resident's clinical record. Requires for the cases described in (A) and (B) that documentation be made by the resident's physician. If a transfer or discharge occurs as a result of a resident failing to pay or to have paid an allowable charge imposed by the facility for an item or service requested by the resident and provided by the facility, and if the resident has become eligible for assistance under Medicaid after admission to the facility, only charges which may be imposed under Medicaid are to be considered allowable.

(2) Pre-Transfer and Pre-Discharge Notice.—(A) Similar provision except applies to nursing facilities under Medicaid. Requires the facility to notify the resident (and an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons for it. (B) Similar provision except includes under the list of exceptions to the 30 day rule a case where a resident has not resided in the facility for 30 days. Requires that in the case of such exceptions that notice must be given as many days before the date of the transfer or discharge as is practicable. (C) Similar provision except provides that notice be given of a resident's right to appeal the transfer or discharge as provided under the State process established under this legislation.

Requires that, in the case of residents with developmental disabilities, the notice include the address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under the Developmental Disabilities Assistance and Bill of Rights Act. Requires that in the case of mentally ill residents, the notice include the address and phone number of the responsible agency for the protection and advocacy system for such persons established under the Protection and Advocacy for Mentally Ill Individuals Act.

(3) Orientation.—Identical provision, except applies to nursing facilities under Medicaid.

(4) Notice on Bed-Hold Policy and Readmission.—

(A) Requires that before a resident is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning the provisions of the State plan under Medicaid regarding the period (if any) during which the resident will be permitted to return and resume residence in the facility, and the policies of the facility regarding such a period. These policies are required to be consistent with the provisions of (C) below.

(B) Requires that at the time of transfer of a resident to a hospital or therapeutic leave, a facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in (A) above.

(C) Requires a nursing facility to establish and follow a written policy under which a resident eligible for medical assistance for nursing facility services under Medicaid, who is transferred from the facility for hospitalization or therapeutic leave, and whose hospitalization or therapeutic leave exceeds a period paid for under Medicaid for the holding of a bed for the resident, will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

(D) No provision.

(d) Access and Visitation Rights.—Requires a nursing facility to: (1) similar, except does not specify that the representatives be officially designated; (2) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by members of the immediate family of the resident; (3) permit immediate access to a resident (subject only to reasonable restrictions) by relatives (other than immediate family members) of the resident and others wo are visiting with the consent of the resident; (4) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident; (5) similar provision except limits the State ombudsman to examine a resident's clinical records.

(e) Equal Acces to Quality Care.—

(1) General Application.—Simiar provison except applies to nursing facilities under Medicaid, and the services of those facilities under the State plan. Specifies that this does not prevent a facility from charging for services furnished, consistent with the notice to residents required under this bill. Specifies that it also does not require a State to offer additional services on behalf of a resident than are otherwise provided under Medicaid.

(2) Admissions.—

(A) General.—Similar provision except specifies that the facility provide oral and written information about how to apply for and use the benefits and how to receive refunds for previous payments covered by such benefits. Also prohibits a facility from requiring a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the fa-

cility. For residents entitled to medicaid assistance, prohibits a facility from charging, soliciting, accepting or receiving (with the exception of amounts otherwise required to be paid under the State plan) any gift, money, donation or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

(B) Construction.—Similar provision except applies to admissions practices of nursing facilities under Medicaid. Also specifies that the admissions provisions does not prevent a facility from charging a resident, eligible for Medicaid, for items or services the resident has requested and received and are not specified in the State plan as included in the term "nursing facility services." Provides that it also does not prevent a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission or continued stay in the facility.

(f) Protection of Resident Funds.—(1) Similar provision except applies to nursing facilities under Medicaid. (2) Requires that where a resident has given the authorization under (1) above, that the nursing facility establish and maintain a system that assures full and complete accounting of each resident's personal funds, and establishes a separate account for such funds in order to prevent any commingling of such funds with institutional funds or with the funds of any other person other than another such resident, and notifies each resident receiving Medicaid when the amount in the resident's account reaches $200 less than the qualifying dollar amount that may result in the loss of Medicaid eligibility (under SSI) and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches that amount, the resident may lose eligibility for medical assistance. (3) Identical provision.

(g) Right to Examine Results of Survey.—No provision.

Senate amendment

(a) General Description.—Requires SNFs and ICFs to protect and promote the rights of individuals residing in the institution, including each of the rights described below, and any other right established by the Secretary.

(b) General Rights.—

(1) Specified Rights.—

(A) Free Choice.—No provision.

(B) Free from Restraints.—No provision.

(C) Privacy.—Provides residents of SNFs and ICFs with the right to associate and communicate privately with persons of their choice.

(D) Confidentiality.—No provision.

(E) Accommodation of Needs.—No provision.

(F) Grievances.—Provides that residents of SNFs and ICFs have a right to prompt efforts by the institution to resolve grievances the individual may have, including those with respect to the behavior of other residents. Also provides the right to file complaints, voice

grievances, and recommend changes in policies and service to the staff of the facility and to outside representatives of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal.

(G) Participation in Resident and Family Groups.—Provides that residents of SNFs and ICFs have the right (with those of family members) to organize, maintain, and participate in resident advisory and family councils, including the right to assistance from a designated staff member, space, and privacy for meetings. Also provides residents with the right to participate freely in social, religious, and community activities that do not interfere with the rights of others residing in the facility.

(2) Notice of Rights and Services.—Provides that residents of SNFs and ICFs have the right (A) to be informed orally and in writing at the time of admission to the institution of the resident's legal rights during the stay at the facility and to have these rights described in a written statement, which is made available to the resident upon reasonable request and which is updated upon changes in rights; (B) to be informed in writing before or at the time of admission and periodically during his or her stay of services available in the facility and of related charges for these services, including any charges for services not covered under Medicare or Medicaid, or not covered by the facility's basic per diem rate.

(3) Rights of Incompetent Residents.—Provides for an individual in a SNF or ICF unable (as determined by State law) to exercise his or her rights, the rights (as specified in regulation by the Secretary) that may be exercised by another person on behalf of the resident (as permitted under State law).

(4) Use of Psychotropic Drugs.—No provision.

(c) Transfer and Discharge Rights.—

(1) In General.—Provides that an individual in a SNF or ICF can be transferred or discharged only for medical reasons, or for his welfare and that of other patients, or for nonpayment of his stay (except as prohibited by Medicare or Medicaid), and must be given reasonable advance notice to ensure orderly transfer or discharge. Requires the SNF and ICF to document in a resident's records the circumstances of a discharge or transfer.

(2) Pre-Transfer and Pre-Discharge Notice.—(A) Requires a SNF and ICF to notify a resident, as evidenced by a signed acknowledgement, of the resident's transfer or discharge. (B) Requires that the notice be provided at least 30 days in advance of the resident's transfer or discharge, except where the resident's health improves sufficiently to allow a more immediate transfer or discharge; a more immediate transfer or discharge is necessitated by the resident's urgent medical needs, as explicitly recorded by the attending physician in the resident's record. (C) Similar provision, but without deadline, and with specification that notice include right to appeal the transfer to the State survey and certification agency.

(3) Orientation.—Similar provision, except applies to SNFs and ICFs and also specifies that orientation "provide for" rather than "ensure" safe and orderly transfer or discharge.

(4) Notice on Bed-Hold Policy and Readmission.—

(A) Requires SNFs and ICFs to provide written information to each individual entitled to Medicaid benefits concerning provisions

of the State's plan regarding bed holds, before discharging the resident for hospitalization or therapeutic leave.

(B) Requires SNFs and ICFs, at the time of discharge of a resident to a hospital or for therapeutic leave, to provide written notice to the resident of the duration of any bed hold under the State's Medicaid plan.

(C) No provision.

(D) Requires that State Medicaid plans provide payment for at least three bed hold days for persons furnished SNF or ICF services under the plan.

(d) Access and Visitation Rights.—Requires SNFs and ICFs to: (1) similar, except specifies that "any" officially designated representative have access; (2) similar, except only specifies access of relatives who are visiting with the consent of the individual; (3) permit access by other individuals designated in writing by the resident; (4) similar, except does not specify "other" services and right to deny access; (5) similar provision, with examination of resident's medical, nursing, and social records.

(e) Equal Access to Quality Care.—

(1) General Application.—Requires SNFs and ICFs to establish and maintain identical policies and practices regarding transfers, discharges, and the provision of those services required under Medicare or Medicaid for all individuals regardless of source of payment.

(2) Admissions.

(A) General.—Prohibits SNFs and ICFs from requiring individuals applying to reside or residing in the institution to waive their rights to benefits under Medicare or Medicaid. Requires the institution to display prominently in the institution and to provide to individuals applying to reside or residing in the institution regarding how to apply for and use benefits under Medicare or Medicaid and how to receive refunds for previous payments covered by such benefits. Also prohibits SNFs and ICFs from requiring any oral or written assurance from any person with respect to an individual who is staying in (or applying for admission) the institution that such person will be financially responsible for any charges for the individual. Further prohibits SNFs and ICFs from requiring (as a condition of admission or continued stay in the facility) any nonrefundable deposit, gift, contribution, or prepayment to be made by or on behalf of an individual.

(B) Construction.—With regard to provision prohibiting the institution from requiring a person to accept financial responsibility for charges of a resident, specifies that this provision does not prohibit an institution from requiring a person who is authorized by law to disburse the income of the resident to enter into an agreement to pay, solely from the items and services for which payment may not be made under Medicare or Medicaid.

Also specifies that where an institution furnishes, at the request of an individual, items or services for which payment may not be made (in whole or in part) under Medicare or Medicaid, the institution may require payment by the individual (or by another on behalf of the individual) of such amounts, if, before accepting an item or service, the individual is informed of the amount for which payment will not be made.

Specifies that the eligibility of an individual for benefits under Medicare or Medicaid will not be affected by any such payment made by the individual (or other person on his or her behalf), and the failure to make such payment shall not constitute grounds for transfer or discharge from the institution.

(f) Protection of Resident Funds.—Requires that SNFs and ICFs establish and maintain a system for protecting the personal funds of residents that meets the following requirements:

(1) The institution furnishes each resident, upon admission, with a written statement that (a) describes all services furnished by the institution that can be charged to the resident's personal funds and the extent to which any such service is included in the institution's basic rate; (b) states there is no obligation for the resident to deposit personal funds with the institution and describes the resident's right to select how such funds are handled; and (c) describes the institution's obligation, once it accepts the written authorization of the resident, to hold, safeguard, and account for the resident's personal funds are detailed immediately below.

(2) Upon the institution's acceptance of the written authorization of the resident, (a) the institution deposits any amount of personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the institution's operating accounts and credits to the account all interest earned; (b) the institution maintains personal funds not in excess of $50 in a non-interest bearing account or petty cash fund; and (c) the institution assures a full and complete accounting of the personal funds so as to ensure that there is no commingling of personal funds held by the institution with the funds of the institution or with the funds of any individual other than another resident.

(3) The institution maintains a written record of all financial transactions involving the personal funds of a resident who entrusts personal funds with the institution and affords the resident (or a legal representative of the resident) reasonable access to such record.

(4) The institution purchases a surety bond to guarantee the security of all personal funds of residents entrusted to the institution.

(5) The institution notifies the resident (or a legal representative of the resident) and the State Medicaid agency when the personal funds of the resident entrusted to the institution reach an amount that threatens the resident's eligibility for SSI or Medicaid.

(6) The institution does not charge to the personal funds of a resident the costs of any item or service for which payment is made under Medicare or Medicaid (as the case may be).

Also requires the Secretary to issue, before the first day of the seventh month to begin after the date of enactment of the bill, regulations required under section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (with regard to costs which may be charged to the personal funds of a resident and costs which are to be included in the reasonable costs of the facility). Provides that in the event the Secretary does not issue these regulations, and notwithstanding any other provision of law, the costs which may not be charged to the personal funds of a resident eligible for benefits under Medicare or Medicaid (and for which pay-

ment shall be made under Medicare or Medicaid, as the case may be) shall include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(g) Right to Examine Results of Survey.—Provides residents of SNFs and ICFs with right to examine, upon reasonable request, the results of the institution's most recent certification survey conducted by the Secretary or a State or local agency and any plan of correction in effect for the institution.

Conference agreement

The conference agreement includes both House provisions with an amendment incorporating Senate provisions:

(1) to protect and promote the right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State or local agency and any plan of correction in effect; and any other right established by the Secretary;

(2) to inform each resident, orally and in writing, at the time of admission, of the resident's legal rights during the stay at the facility; and

(3) to apply transfer and discharge requirements to all transfers and discharges.

Furthermore, the conference agreement incorporates Senate provisions with regard to protection of residents' funds.

(5) Requirements Relating to Administration and other Matters (Section 9211(c) of Ways and Means; Section 4111(e) of Energy and Commerce; and Section 4051(a)(1) of Senate amendment)

Present law

Under current law, SNFs participating in Medicare and/or Medicaid must meet specified requirements relating to administration, conformance with the Life Safety Code, and other matters under 1861(j) of the Medicare statute. They must also meet certain requirements relating to notification in the case of a change in ownership or control in Section 1124 of the Social Security Act. ICFs under Medicaid are required to have methods of administrative management that will enable them to meet other requirements in regulations. They also must meet certain requirements relating to notification in the case of a change in ownership or control.

House bill

Section 9211(c).—

(a) Administration.—Provides that for purposes of Medicare requirements relating to SNFs, a SNF must be administered in a manner that enables it to attain or maintain the highest possible physical, mental and psychosocial well-being of each resident (consistent with requirements established by the Secretary as required under this bill).

(1) Required Notices.—Requires that if a change occurs in the persons with an ownership or control interest in the SNF (as defined by the disclosure of ownership section of the Social Security Act); in the persons who are officers, directors, agents, or managing

employees (as defined under the section of the Social Security Act on disclosure by institutions of individuals who have been convicted of certain offenses); or the individual who is the administrator or director of nursing of the facility, that the SNF provide notice to the State agency responsible for licensing of the facility. Requires notice at the time of the change, of the change and of the identity of the new person or persons.

(2) Nursing Facility Administrator.—Requires the administrator of a SNF to meet any standards established by the Secretary (as specified below under Federal responsibilities for standards).

(3) Licensing and Life Safety Code.—Requires that a SNF be licensed under applicable State and local law. Requires a SNF to meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that the provisions of such Code will not apply in any State if the Secretary finds that in the State there is in effect a fire and safety code, imposed by State law, which provides protection for residents of and personnel in SNF facilities at least equal to the protections provided under such Code.

(4) Sanitary and Infection Control and Physical Environment.—Requires a SNF to establish and maintain an infection control program designed to provide a safe, sanitary and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection. Requires the SNF to be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel and the general public.

(5) Miscellaneous.—Requires a SNF to operate and provide services in compliance with all applicable Federal, State and local laws and regulations (including the requirements of the Social Security Act relating to disclosure of ownership) and with all accepted professional standards and principles which apply to professionals providing services in such a facility. Requires a SNF to meet such other requirements relating to the health, safety and well-being of residents or relating to the physical facilities in the SNF as the Secretary may find necessary.

Section 4111(e).—

(a) Administration.—Similar provision except applies to nursing facilities under Medicaid.

(1) Required Notices.—Similar provision but also requires notice if a change occurs in the corporation, association, or other company responsible for the management of the facility.

(2) Nursing Facility Administrator.—No provision.

(3) Licensing and Life Safety Code.—Similar provision except applies to nrusing facilities under Medicaid and provides that the Secretary may waive, for such periods as he deems appropriate, specific provisions of the Life Safety Code, which is regidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents of personnel. Provides for an exception from the provisions of such Code in any State if the Secretary finds that in that State there is in effect a fire and safety code, imposed by State law,

which adequately protects residents of the personnel in nursing facilities.

(4) Sanitary and Infection Control and Physical Environment.—Similar provision except applies to nursing facilities under Medicaid.

(5) Miscellaneous.—Similar provision except applies to nursing facilities under Medicaid and requires that a nursing facility must meet such other requirements relating to the health and safety of residents or relating to the physical facilities in the facility as the Secretary may find necessary, which may include any of the additional conditions prescribed by the Secretary for SNFs under Medicare.

Senate amendment

(a) Administration.—Similar provision except applies to SNFs and ICFs and specifies that resources be used effectively and efficiently to maintain and improve the residents' physical, mental and psychosocial wellbeing.

Also requires a SNF to have policies which are developed with the advice of (and with review of these policies from time to time by) a group of professinal personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides. Also requires the SNF to have a physician, a registered professional nurse, or a medical staff responsible for the execution of these policies.

Further requires a SNF to have in effect (1) a utilization review plan that meets the requirements of Medicare law and (2) an overall plan and budget that meet the requirements of Medicare law.

Requires SNFs to cooperate in an effective program that provides for regular independent medical evaluation and audit of the residents of the institution to the extent required by the programs in which the institution participates (including a medical evaluation of each resident's need for SNF services).

(1) Requires Notices.—No provision.

(2) Nursing Facility Administrator.—No provision.

(3) Licensing and Life Safety Code.—Identical to Energy and Commerce provision except applies to SNFs.

(4) Sanitary and Infection Control and Physical Environment.—No provision.

(5) Miscellaneous.—Similar to Ways and Means provision but without specification of professional standards and principles "which apply to professionals providing services in such a facility."

Also provides that, notwithstanding any other provision of law, all information concerning nursing facilities required to be filed under the bill with the Secretary or a State agency shall be made available to Federal and State employees for purposes consistent with the effective administration of programs under Medicare.

Specifies that nothing in the requirements for SNFs and ICFs shall be construed to require an institution that does not participate in Medicaid to accept payments from Medicaid or to accept for treatment any individual for whom payment may be made under Medicaid.

Conference agreement

The conference agreement includes both House provisions.

(6) Requirements Relating to Preadmission Screening for Mentally Ill and Mentally Retarded Individuals (Section 4111(d) of Energy and Commerce; and Sections 4051 (a)(1) of Senate amendment)

Present law

Under the current Medicaid statute, States are required to review patients to determine the appropriateness and quality of care provided. In addition, ICF services may include services in a facility for the mentally retarded if the primary purpose of the institution (or distinct part thereof) is to provide services for the mentally retarded, and if such persons receive active treatment. Furthermore, Medicaid coverage of inpatient psychiatric care is limited to persons 21 years of age of younger or 65 years of age or older. There are no statutory requirements for preadmission screening to determine whether a SNF or ICF is the appropriate level of care required by a mentally retarded or mentally ill person.

House bill

Section 4111(d).—Prohibits a nursing facility from admitting, on or after Jan. 1, 1989, any new resident who (1) is mentally ill (as defined under this bill) unless the State mental health authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires active treatment for mental illness, or (2) is mentally retarded (as defined in this bill) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requries the level of services provided by a nursing facility and, if the individual requires such level of services, whether the individual requires active treatment for mental retardation. Requires the facility to make a copy of any such determination part of the resident's clinical records.

Senate amendment

Similar provision to Energy and Commerce, except specifies that the basis for the State mental health authority's determination is an independent physical and mental evaluation.

Conference agreement

The conference agreement includes the House provision. As noted above, these provisions were included under requirements that facilities participating in Medicaid must meet for resident assessments.

(7) State Requirements Relating to Nursing Facility Requirements (Section 9211(c) of Ways and Means; Section 4111(f) of Energy and Commerce; and Sections 4051(a)(1), (6), and (7) of Senate amendment)

Present law

Under current Medicare law, the Secretary contracts with the States to utilize the services of the State health agency or other appropriate State agency to determine compliance with Medicare's conditions of participation for SNFs. However, there are no requirements that States establish and approve nurse aide training programs for individuals employed as nurse aides in SNFs. States are not required to establish registries to track or record the qualifications of nurse aides. States are also not required to have in place a system for appealing involuntary transfers or discharges from SNFs.

Under current Medicaid law, the State Medicaid agency is required to contract with the State survey agency used by Medicare (if that agency is the agency responsible for licensing health facilities). There are no requirements that States establish and approve nurse aide training programs for individuals employed as nurse aides in SNFs or ICFs. States are not required to establish registries or record the qualifications of nurse aides. States are also not required to have a system for appealing involuntary transfers or discharges from ICFs or SNFs participating in Medicaid. Medicaid law requires States to have a program for the licensing of administrators of nursing homes. The States are not currently required under their Medicaid plans to develop a written notice of rights, or to have in effect a preadmission screening program for making determinations for mentally ill and mentally retarded individuals.

House bill

Section 9211(c).—

(a) In General.—Adds a new section to the SNF survey and certification provisions of the Medicare statute prohibiting the Secretary from entering into an agreement with a State with respect to determining whether the institution is a SNF unless the State meets the following requirements.

(b) Specification of Nurse Aide Training.—Requires the State by Sept. 1, 1988 to specify those training and testing programs, and those testing programs, that it recognizes and approves for purposes of the nurse aide requirements of this bill and that meet the minimum requirements established by the Secretary for standards for nurse aide training. Prohibits the State from approving a program (1) offered by or in a SNF which has been determined to be out of compliance with the requirements for SNFs (related to provision of services, patients' rights and administration) within the previous two years, or (2) offered by a SNF unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in SNFs. Provides that the failure of the Secretary to establish standards for nurse aide training programs does not relieve the State of the responsibility to specify approved programs.

(c) Nurse Aide Registry.—Requires the State to maintain a registry of all individuals who have successfully completed a nurse aide training and testing program, or a testing program. Requires the registry to provide (in accordance with regulations of the Secretary) for the inclusion of specific findings of resident neglect or

abuse involving individuals listed in the registry, notice to the individual of the proposed inclusion of such finding with respect to the individual, and for the inclusion of any brief statement of individuals disputing the findings. Requires that in the case of inquiries to the registry concerning a listed individual, that any information disclosed concerning a finding also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of the statement. Provides that the failure of the Secretary to establish standards for nurse aide registries does not relieve the State of its responsibility to establish and maintain a registry.

(d) Appeals Process for Involuntary Transfers.—Requires the State to provide a fair mechanism (meeting the guidelines established under this bill) for hearing appeals on involuntary transfers of residents for transfers from SNFs on or after Oct. 1, 1989. Provides that the failure of the Secretary to establish standards for appealing involuntary transfers does not relieve the State of its responsibility for establishing a fair mechanism.

(e) Standards for Facility Administrators.—Requires that by July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under this bill respecting the qualification of SNF administrators.

(f) Notice of Medicaid Rights.—No provision.

(g) State Requirements for Preadmission Screening.—No provision.

(h) State Requirements for Annual Resident Review.—No provision.

(i) Response to Preadmission Screening and Resident Review.—No provision.

(j) Denial of Payment where Failure to Conduct Preadmission Screening.—No provision.

(k) Permitting Alternative Disposition Plans.—No provision.

(l) Appeals Procedures.—No provision.

(m) Definitions.—No provision.

Section 4111(C).—

(a) In General.—Requires States under their Medicaid programs to carry out the following responsibilities in connection with the implementation of the above requirements:

(b) Specification of Nurse Aide Training Programs.—Requires each State, as a condition of approval of its plan under Medicaid, to specify not later than Jan. 1, 1989, those nurse aide training programs that the State recognizes and approves for purposes of the nurse aide training requirements of this bill and that meet the minimum standards established by the Secretary. Provides that the failure of the Secretary to establish such standards does not relieve any State of its responsibility to specify approved programs. Prohibits the State from approving a program (1) offered by or in a nursing facility which has been determined to be out of compliance with the nursing facility requirements within the previous two years, or (2) offered by a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities. Prohibits the State from delegating this responsibility to the facility.

(c) Nurse Aide Registry.—Requires each State, as a condition of approval of its plan under Medicaid, to establish by not later than Jan. 1, 1989, and maintain a registry of all individuals who have satisfactorily completed an approved nurse aide training program. Requires the registry to meet minimum requirements established by the Secretary under this bill, but failure of the Secretary to issue final regulations does not relieve the State from its responsibility to establish and maintain a registry.

(d) Appeals Process for Involuntary Transfers.—Requires each State, as a condition of approval of its plan under Medicaid, and effective for transfers from nursing facilities on or after Oct. 1, 1989, to provide for a fair mechanism for hearing appeals on involuntary transfers of residents. Requires this mechanism to meet any guidelines established by the Secretary under the requirements of this bill, but the failure of the Secretary to establish such guidelines does not relieve the State of its responsibility for such a fair appeals mechanism.

(e) Standards for Facility Administrators.—No provision.

(f) Notice of Medicaid Appeal Rights.—Requires each State as of April 1, 1988, as a condition of approval of its plan under Medicaid, to develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under Medicaid. Requires this notice to include a description of the provisions of Medicaid law relating to protection of income and resources of community spouses.

(g) State Requirements for Preadmission Screening.—Requires each State, as a condition of approval of its plan under Medicaid, effective Jan. 1, 1989, to have in effect a preadmission screening program, for making determinations (using criteria developed under this bill)—for mentally ill and mentally retarded individuals who are admitted to nursing facilities on or after Jan. 1, 1989.

Provides that the failure of the Secretary to develop minimum criteria (as provided for under the requirements of this bill) does not relieve any State of its responsibility to have a preadmission screening program or to perform resident reviews (as described below.)

(h) State Requirements for Annual Resident Review.—

(1) Mentally Ill Residents.—Requires as a condition of approval of a State plan under Medicaid, as of April 1, 1990, for each mentally ill resident in a nursing facility, that the State mental health authority review and determine (using criteria developed under this bill) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in the Medicaid statute) or of an institution for mental diseases providing medical assistance to individuals 65 or older, and whether or not the resident requires active treatment for mental illness.

(2) Mentally Retarded Residents.—Requires as a condition or approval of a State plan under Medicaid, as of April 1, 1990, for each mentally retarded resident in a nursing facility, that the State mental retardation or developmental disability authority review and determine (using criteria developed under this bill) whether or not the resident, because of the resident's physical and mental con-

dition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility (as described in the Medicaid statute), and whether or not the resident requires active treatment for mental retardation.

(3) Frequency of Reviews.—Requires that the reviews and determinations for mentally ill and mentally retarded residents be conducted for each such resident not less than once per year. Provides that for residents subject to preadmission review, the review and determinaton may be done after the resident has been in the facility for 1 year. Requires that the reviews and determinations for mentally ill and mentally retarded residents be done no later than April 1, 1990.

(i) Response to Preadmission Screening and Resident Review.—Requires as a condition of approval of a State plan, as of April 1, 1990, that the State meet the following requirements:

(1) Requires that for a resident who is determined not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must (in consultation with the resident's family or legal representative and care-givers) inform the resident of the institutional and noninstitutional alternatives covered under the State plan, offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting, clarify the effect on eligibility for services under Medical if the resident chooses to leave the facility (including its effect on readmission to the facility), and regardless of the resident's choice, provide for (or arrange for the provision of) such treatment for the mental illness or mental retardation. Prohibits denial of Medicaid payment to a State for nursing facility services for a resident described under this section because the resident does not require the level of services provided by a nursing facility, if the resident chooses to remain in the facility.

(2) Requires that for residents who are determined not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who have not continuously resided in a nursing facility for at least 30 months before the date of the determinaton, the State must (in consultation with the resident's family or legal representative and care-givers) arrange for the safe and orderly discharge of the resident from the facility, prepare and orient the resident for such discharge, and provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation.

(3) Requires that for residents who are determined not to require the level of services provided by a nursing facility and not to require active treatment for mental illness or mental retardation, the State must arrange for the safe and orderly discharge of the resident from the facility and prepare and orient the resident for the discharge.

(j) Denial of Payment where Failure to Conduct Preadmission Screening.—Prohibits Medicaid payment with respect to nursing facility services furnished to an individual for whom a determination is required but for whom a determination is not made.

(k) Permitting Alternative Disposition Plans.—Requires that for mentally retarded or mentally ill residents who are determined not to require the level of services for a nursing facility, but who require active treatment for mental retardation or mental illness, a State and the nursing facility be considered in compliance if, before Oct. 1, 1988, the State and the Secretary have entered into an agreement relating to the disposition of such residents and the State is in compliance with the agreement. The agreement may provide for the disposition of the residents after April 1, 1990.

(l) Appeals Procedures.—Requires each State, as a condition of approval of its plan under Medicaid, effective Jan. 1, 1989, to have in effect an appeals process for individuals adversely affected by determinations resulting from preadmission screening and annual resident reviews.

(m) Definitions.—Provides definitions for "mentally ill," "mentally retarded," and "active treatment."

Provides that an individual is considered to be "mentally ill" if the individual has a primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition).

Provides that an individual is considered to be "mentally retarded" if the individual is mentally retarded or a person with a related condition, as described in section 1905(d) of Medicaid.

Specifies that the term "active treatment" has the meaning given this term by the Secretary in regulations.

Senate amendment

(a) In General.—No provision.

(b) Specification of Nurse Aide Training Programs.—Requires each State, as a condition of approval of its Medicaid plan, to specify not later than Jan. 1, 1990, those nurse aide training programs that the State recognizes and approves (in consultation with providers, consumers, nurse aides, health care professionals, and other interested groups) and that meet the minimum requirements established by the Secretary.

(c) Nurse Aide Registry.—Requires each State, as a condition of approval of its Medicaid plan, to maintain not later than Jan. 1, 1990, a registry of all individuals who have successfully completed an approved nurse aide training program and records of all test results from these programs.

(d) Appeals Process for Involuntary Transfers.—No provision.

(e) Standards for Facility Administrators.—No provision.

(f) Notice of Medicaid Appeal Rights.—No provision.

(g) State Requirements for Preadmission Screening.—Similar to Energy and Commerce, except amends section 1902 of Medicaid statute to add preadmission screening and resident review to State requirements. Specifies that the program be used for mentally ill and mentally retarded individuals who are being considered for admission to facilities. Does not specify that States are still responsible for a preadmission screening program if the Secretary fails to act.

See also related provision, section 4054 "Federal Review of State Inspection of Care Determinations," of Senate bill, (item #20 in Medicare-Medicaid comparison).

(h) State Requirements for Annual Resident Review.—

(1) Mentally Ill Residents.—Similar provision, except specifies that the State mental health authority shall base its review on an independent physical and mental evaluation. Specifies that the determination include whether the resident, because of the resident's physical or mental condition, or lack of appropriate alternative placement, requires a nursing facility or the level of services provided in another setting, including an inpatient psychiatric hospital or an institution for mental diseases providing medical assistnace to individuals 65 years or older or a program under an approved Medicaid home and community based waiver.

See also related provision, section 4054 "Federal Review of State Inspection of Care Determinations," of Senate bill (item #20 in Medicare-Medicaid comparison).

(2) Mentally Retarded Residents.—Similar provision, except includes programs under an approved home and community based waiver. Provides that the State mental retardation or developmental disability authority review and determine (using criteria developed under this bill) whether or not the resident, because of the resident's physical or mental condition (or the lack of appropriate alternative placement), requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility (as described in the Medicaid statute), and whether or not the resident requires active treatment for mental retardation.

See also related provision, section 4054 "Federal Review of State Inspection of Care Determinations," of Senate bill (item #20 in Medicare-Medicaid comparison).

(3) Frequency of Reviews.—Identical provision.

(i) Response to Preadmission Screening and Resident Review.—Identical provision.

(j) Denial of Payment where Failure to Conduct Preadmission Screening.—Identical provision.

(k) Permitting Alternative Disposition Plans.—Identical provision.

(l) Appeals Procedures.—Identical provision.

(m) Definitions.—Similar provision of Energy and Commerce, except also provides that the term "nursing facility" means a skilled nursing facility, or intermediate care facility (other than an intermediate care facility for the mentally retarded). Specifies, in addition, that "mentally ill" does not include any organic disease of the brain or dementia (including Alzheimer's disease and related disorders). Specifies that an individual is "mentally retarded" if the individual requires services of the type described in section 1905(d) of Medicaid.

Conference agreement

The conference agreement includes both House provisions with amendments to the Medicaid program to:

(1) specify that an individual is considered to be "mentally ill" if the individual has a primary or secondary diagnosis of mental disorder and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder), and

(2) provide that active treatment does not include services which the facility is otherwise required to provide or arrange for its residents under the requirements of the amended law.

The conference agreement incorporates the Senate requirement that the annual review of mentally ill residents be based on an independent physical and mental evaluation.

(8) Federal Responsibilities for Standards (Section 9211(d) of Ways and Means; Section 4111(g) and 4112 of Energy and Commerce; and Sections 4051(a)(1), (4), (6), and (8) of Senate amendment)

Present law

Under current law, the Secretary has general oversight responsibilities for the assurance that Medicare and Medicaid beneficiaries receive appropriate and adequate care and have their safety, welfare and rights protected. The Secretary is required to consult with State agencies and other organizations to develop conditions of participation for providers of services, including SNFs. The Secretary is also required to promote the effective and efficient use of public money. The Secretary is not required to establish nurse aide training programs for nurse aides employed by SNFs in the Medicare and Medicaid programs. Currently, there are no Federally established appeals rights for involuntary transfers or discharges from SNFs.

Current law provides the Secretary with authority to prescribe appropriate standards for the provision of care in ICFs that participate in Medicaid. However, there are no statutory requirements that the Secretary establish standards for nurse aide training programs of nurse aide registries. There are also no statutory requirements that the Secretary establish appeals rights for involuntary transfers, instruments for resident assessments or criteria for preadmission and resident review.

House bill

Section 9211(g).—

(a) General Responsibilities of the Secretary for Standards.— Amends the Medicare statute relating to SNF requirements to provide for the following Federal responsibilities for standards. Specifies that it is the duty of the Secretary to assure that requirements which govern the provision of care in SNFs under Medicare, and the enforcement of such requirements, are adequate to protect the health, safety, welfare and rights of residents and to promote the effective and efficient use of public moneys.

(b) Nurse Aide Training Programs.—Requires the Secretary by March 1, 1988, to establish minimum standards for nurse aide training and testing programs, and testing programs, and minimum standards for the mechanism by which a State approves such programs. Requires that these standards specify the minimum amount of time required for the initial and ongoing training and retraining, including not less than 100 hours with respect to initial training; the areas to be included in a training and testing program, including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services and residents' rights; and the minimum qualifications for instructors in

the programs. Requires that the standards for testing programs specify the areas to be included in the testing programs, including at least basic nursing and personal care skills, cognitive behavior and social care, basic restorative services and resident rights.

Requires that the standards relating to State approval of nurse aide programs specify the frequency with which training and testing programs are to be reviewed by the State and the methodology (including performance-based evaluations as well as analysis of written submissions) by which a State makes determinations whether a program meets the minimum standards.

(c) Federal Guidelines for State Appeals Process for Transfers.—Requires by Oct. 1, 1988, that the Secretary establish guidelines for minimum standards which State appeals processes must meet to provide a fair mechanism for hearing appeals on involuntary transfers of residents from SNFs.

(d) Secretarial Standards for Licensing of Administrators.—Requires by March 1, 1988, that the Secretary develop standards to be applied in the assuring of qualifications of administrators of SNF.

(e) Requirements for Administration.—Requires that with respect to a SNF certified for participation in Medicare, that the Secretary establish by Oct. 1, 1988, requirements with respect to its governing body and management, agreements with hospitals regarding transfers of residents to and from the hospitals and other nursing facilities, disaster preparedness, direction of medical care by a physician, laboratory, radiological and pharmaceutical services, resident care, including clinical records and resident and advocate participation.

(f) Specification of Data Set for Resident Assessments and Penalty for Falsification.—Requires that by Jan. 1, 1989, the Secretary specify a minimum data set of core elements and common definitions for use by SNFs in conducting the resident assessments required by this bill and establish guidelines for use of the data set.

(g) Federal Minimum Criteria for Preadmission Screening and Resident Review.—No provision.

(h) Standards for Assessing Quality of Care..—No provision.

Sections 4111(g) and 4112.—

(a) General Responsibilities of the Secretary for Standards.—Similar provision except applies to Federal responsibilities for nursing facilities under Medicaid.

(b) Nurse Aide Training.—Requires the Secretary to establish by July 1, 1988, minimum standards for training programs for nurse aides, including the curriculum, minimum hours of training, qualifications of instructors, and procedures for determining competency. Provides that such standards may allow recognition of programs offered by or in facilities, as well as outside facilities, and recognition of programs in effect on the date of enactment. Requires the standards to permit a State to find that an individual who has completed (before Jan. 1, 1989) a nurse aide training program to be considered as having completed a program approved under this bill if the State determines that, at the time the program was offered, the program met the requirements for approval under this bill.

Also requires the Secretary to establish by July 1, 1988 minimum standards for the establishment and maintenance of nurse aide registries.

Requires the standards for the registries to provide for the inclusion of documented findings of resident neglect or abuse involving individuals listed in the registry.

(c) Federal Guidelines for State Appeals Process for Transfers.—Similar provision except applies for nursing facilities under Medicaid.

(d) Secretarial Standards for Licensing of Administrators.—No provision (but see below for provision repealing existing requirements for State programs for licensing of administrators of nursing homes).

(e) Requirements for Administration.—Similar provision except provides that the Secretary establish such criteria for assessing a nursing facility's compliance with requirements under Medicaid as specified in this bill. Also does not specify that the Secretary establish requirements for: (1) agreements for transfers of residents to and from other nursing facilities. (2) pharmaceutical services, and (3) resident care. Substitutes "legal representatives" for "advocate" participation.

(f) Specification of Data Set for Resident Assessments and Penalty for Falsification.—Amends the Medicaid statute to require by April 1, 1990, that the Secretary designate one or more instruments which a State may specify for use by nursing facilities in complying with the resident assessment requirements of this bill. Requires the instruments to be consistent with a minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary. Requires as a condition of approval of the State plan and effective July 1, 1990, that each State specify the instrument to be used by the facilities. Requires the instrument to be one designated by the Secretary (as provided above) or one which the Secretary has approved as being consistent with the minimums specified by the Secretary.

(g) Federal Minimum Criteria for Preadmission Screening and Resident Review.—Requires the Secretary to develop by Oct. 1, 1988, minimum criteria for States to use in making determinations (relating to preadmission screening and resident assessments) and in permitting individuals adversely affected to appeal such determinations, and to notify the States of such criteria.

(h) Standards for Assessing Quality of Care.—No provision.

Senate amendment

(a) General Responsibilities of the Secretary for Standards.—No provision.

(b) Nurse Aide Training.—Similar to Ways and Means provision, except (1) requires that Secretary establish minimum standards not later than one year after enactment; (2) specifies "competency evaluation" rather than "testing" programs; (3) requires that standards for initial training specify not less than 75 hours; and (4) does not require that standards specify minimum amount of time required for retraining.

(c) Federal Guidelines for State Appeals Process for Transfers.—Requires the Secretary to establish requirements pertaining to

inter- and intra-institution transfers and discharges, including patient rights of notice and appeal.

(d) Secretarial Standards for Licensing of Administrators.—No provision.

(e) Requirements for Administration.—Requires that the Secretary establish for SNFs and ICFs criteria for assessing an institution's compliance with administration requirements pertaining to its governing body; its management (including nursing services); resident and consumer participation; medical direction and physicians' services (including the use of physicians' assistants and nurse practitioners); laboratory, radiological, and pharmaceutical services; resident care (including medical records); agreements regarding transfers of residents to and from hospitals; and levels of professional staffing.

(f) Specification of Data Set for Resident Assessments and Penalty for Falsification.—Requires the Secretary, not later than Jan. 1, 1990, to specify a minimum data set for use by SNFs and ICFs in conducting resident assessments required under the bill and to establish guidelines for utilization of the data set.

(g) Federal Minimum Criteria for Preadmission Screening and Resident Review.—Similar provision except specifies that the Secretary develop separate minimum criteria with respect to individuals who are mentally ill or mentally retarded.

(h) Standards for Assessing Quality of Care.—Requires the Secretary to establish standards for assessing the quality of care provided by institutions in at least the following areas: (1) vision and hearing, (2) activities of daily living, (3) use of physical restraints, (4) accidents, (5) nutrition and fluid intake, (6) cognitive, behavioral, and social functioning, (7) use of urinary catheters, (8) prevention and care of pressure ulcers and (9) use of drugs.

Conference agreement

The conference agreement includes both House provisions with an amendment incorporating Senate provisions requiring:

(1) the Secretary to issue regulations on those items and services furnished in nursing facilities not chargeable to the personal funds of a resident, and

(2) rules that would apply if the Secretary fails to publish these regulations.

Furthermore, the conference agreement includes an amendment to require the Secretary to review, in a sufficient number of cases to allow reasonable inferences, each State's compliance with requirements relating to discharge and placement of mentally ill and mentally retarded residents.

The conference agreement also incorporates the Senate requirement that the Secretary's standards for nurse aide training include a minimum of 75 hours of initial training. The conferees intend that the Secretary, in establishing standards for nurse aide training, consider standards already developed by non-profit organizations.

(9) Cost of Meeting Requirements (Section 9211(e) of Ways and Means; 4111(b) and (c) of Energy and Commerce; and Sections 4051(a)(3) of Senate amendment)

Present law

Under current law, SNFs participating in Medicare are reimbursed on a reasonable cost basis, or if they provide less than 1,500 days of care to Medicare beneficiaries in a calendar year, they may be reimbursed under a prospective payment system.

States are required to reimburse SNFs and ICFs at rates which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities.

In general, the Federal government shares with States the costs of Medicaid covered services by means of a variable matching formula that is based on a State's per capita income. Federal matching for services ranges from 50 percent to 78.5 percent. Medicaid law also specifies special matching rates for program administration.

In general, the Federal matching rate for program administration is 50 percent, with a 75 percent matching rate for administration costs associated with the compensation or training of skilled professional personnel, and staff supporting these

House bill

Section 9211(e).—Amends the section of the Medicare statute relating to definitions of reasonable costs for SNFs to provide that reimbursement of SNFs take into account the costs, and based on patient-days of services furnished, that facilities incur in complying with the requirements of this bill (relating to provision of services, residents' rights and administration) including the costs of nurse aid training and testing and nurse aide testing programs. Amends the section of the Medicare statute relating to prospective payments of certain SNFs for routine costs to provide that in computing the payment rates, that Medicare take into account costs relating to compliance with the nursing facility requirements of this bill and of conducting nurses aide training and testing programs and nurse aid testing programs.

Section 411 (b) and (c).—Requires that State payment rates to nursing facilities take into account the cost of complying with requirements of this bill related to provision of services, residents' rights, and administration. Also requires States to provide for appropriate reductions in payments where nurse staffing requirements have been waived.

Also requires that the cost of training for nurse aides be eligible for Federal matching payments, regardless of whether the training programs are provided in or outside of nursing facilities or of the skill of the personnel involved in such programs. Provides that during FY88 and FY89, the Federal matching rate for nurse aide training would be the State's regular matching rate for services, plus 25 percentage points, up to 90 percent. Provides that thereafter, the matching rate for the costs of nurse aide training is 50 percent.

Authorizes a 75 percent Federal matching rate for costs attributable to preadmission screening and resident review activities of this bill.

Senate amendment

Amends Medicaid, effective for fiscal years beginning on or after Oct. 1, 1989, to specify that a State's plan shall not be considered to have met the requirement for reimbursing SNFs and ICFs (at rates that are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities) unless the State has, as of April 1, before the fiscal year concerned, submitted to the Secretary an amendment to the plan to provide for an appropriate adjustment in the payment rates for SNFs and ICFs to reflect the costs of complying with any requirement for these facilities that takes effect during the fiscal year concerned which was not in effect on Oct. 1, 1987, in Federal or State law or regulation. Requires the Secretary to review, not later than Sept. 30 before the fiscal year concerned, each plan amendment submitted for these purposes. Specifies that if the Secretary disapproves the amendment, the State shall immediately submit a revised amendment which meets the requirement. Further specifies that the absence of approval of a plan amendment does not relieve the State or facility of any obligation or requirement under Medicaid.

Conference agreement

The conference agreement includes both House provisions.

(10) Required Report to Congress (Section 9211(f) of Ways and Means; section 4112(a)(3) of Energy and Commerce)

Present law

There is no requirement under current Medicare law that resident assessments be used in determining care requirements for Medicare residents of SNFs. There is also no requirement that a resident assessment be linked or coordinated with a plan of care for the resident.

There is also no statutory requirement for assessments of residents of Medicaid SNFs and ICFs. Regulations provide for a regular medical evaluation and audit for Medicaid SNF residents, and a health care plan for ICF residents.

House bill

Section 9211(f).—Requires the Secretary to evaluate, and report to Congress not later than Jan. 1, 1992, on the implementation of the resident assessment process for residents of SNFs (as created under this bill).

Section 4112(a)(3).—Similar provision except applies to resident assessment process for residents of nursing facilities (as created under this bill).

Senate amendment

No provision.

Conference agreement

The conference agreement includes both House provisions.

(11) Technical Conforming Provisions (Section 9211(g) of Ways and Means; Section 4111(d)–(i) of Energy and Commerce.

House bill

Section 9211(g).—Makes technical conforming changes in certain provisions of the Medicare statute.

Section 4111(d)-(i).—Makes technical changes in the definition of nursing facility in the Medicaid statute. Provides that nursing facility services (as opposed to skilled nursing facility services) are mandatory for adults; eliminates the payment differential between ICFs and SNFs; provides for clarifying terminology; repeals the existing requirements for State programs for licensing of administrators of nursing homes; and makes other technical changes.

Senate amendment

No provision.

Conference agreement

The conference agreement includes both House provisions.

(12) Incorporating Requirements for Nursing Facilities into State Plan (Section 4111(b) of Energy and Commerce; and Section 4051(f) of Senate amendment)

Present law

Section 1902(a) of the Medicaid Statute provides for specific requirements that State Medicaid plans must meet if they are to be approved by the Secretary. If the Secretary finds that a plan is not amended to reflect changes in the requirements, Federal payments may be terminated after reasonable notice and hearing.

House bill

(a) General Application.—Amends the provision of the Medicaid statute relating to payments for nursing facilities under State plans to require State plans to provide (1) that nursing facilities satisfy all requirements specified above; (2) specify the items and services included in nursing facility services; (3) for procedures for making available to the public data and methodology used in establishing payment rates for nursing facilities; and (4) for compliance with various requirements of the bill related to State responsibilities, resident assessment, survey and certification, etc.

(b) State Plan Amendment Required.—Provides that as of April 1, 1989, a State plan under Medicaid will not have met the revised requirements for participation of the law, unless by that date the State has submitted to the Secretary a plan amendment to provide for an appropriate adjustment in payment amounts for nursing facility services furnished on or after Oct. 1, 1989. Requires the Secretary to review and approve or disapprove the amendment by Sept. 30, 1989. If a State's plan amendment is disapproved, requires the State to immediately submit a revised amendment. Provides that the absence of approval of a plan amendment would not relieve the State or any nursing facility of any obligation or requirement under Medicaid as revised by this bill.

Senate amendment

(a) General Application.—No provision.

(b) State Plan Amendment Required.—Requires the Secretary, in consultation (as appropriate) with State agencies administering or responsible for the administration of Medicaid, to compile, a list of the scope and extent of SNF and ICF services that are covered under the State's Medicaid plan and a list of the scope and extent of extended care services and post-hospital extended care services for which payment is made under Medicare. Requires the Secretary, acting through the State agency, to make the first of these lists available to individuals entitled to Medicaid and to providers of the services to which the list applies. Further requires the Secretary to make the second list available to individuals receiving benefits under Part A of Medicare and to providers of the services to which this list applies. Requires the Secretary to provide for the updating of each list to reflect any changes in the services to which the list applies.

Conference agreement

The conference agreement includes the House provision.

(13) Technical Assistance with Developing Case Mix Reimbursement Methodology (Section 4111(j) of Energy and Commerce)

Present law

Current Medicaid law requires State Medicaid plans to provide payment for SNF and ICF services through reasonable and adequate rates determined by State Medicaid agencies. States may use a variety of reimbursement methodologies to pay for nursing home care, including case-mix reimbursement systems.

House bill

Requires the Secretary upon the request by a State to furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision.

(14) Report on Staffing Requirements (Section 4111(k) of Energy and Commerce)

Present law

There is no provision in current law.

House bill

Requires the Secretary to report to Congress, not later than Jan. 1, 1993, on the progress made in implementing the nursing facility staffing requirements as amended by this bill, including the number and types of waivers approved and the number of States which have received a delay of an effective date.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision.

(15) Survey and Certification Process (Section 9212 of Ways and Means; Section 4113 of Energy and Commerce; and Section 4051(c) of Senate amendment)

Present law

(a) State Requirement for Survey and Certification Process.—Section 1864 of Medicare law requires the Secretary to enter into agreements with States to survey nursing homes and certify their compliance or noncompliance with Medicare participation requirements. SNFs are surveyed annually by the State agency to determine compliance with Medicare's conditions of participation. In addition, the Secretary has the authority to issue instructions regarding the survey protocol. The Federal government pays for the survey training on a reasonable cost basis, which is included in the survey budget. The funds for the surveys come out of the Medicare Hospital Insurance Trust Fund.

Section 1902(a)(33)(B) of Medicaid law requires the State Medicaid agency to contract with the State survey agency used by Medicare (if that agency is responsible for licensing health facilities) to determine whether facilities meet the requirements for participation in the Medicaid program.

(b) State and Federal Responsibility.—Under Medicaid law, the State survey agency may certify a facility that fully meets requirements and standards for up to 12 months.

The Medicaid program currently authorizes a 75 percent Federal matching rate to the States for costs attributable to compensation or training of skilled professional medical personnel and staff supporting such personnel. A portion of Medicaid nursing home survey costs fall into this category. Other survey-related expenditures under Medicaid are reimbursed at the 50 percent Federal matching rate for general administrative costs.

(c) Standard Surveys.—The Secretary is authorized to conduct onsite surveys of a sample of facilities to evaluate whether the survey agency has correctly determined compliance of the facility with program requirements. These reviews are referred to as validation surveys in the case of Medicare participating facilities, and lookbehind surveys in the case of Medicaid facilities. If the Secretary finds that such a facility fails to meet program requirements and standards, it is authorized to terminate the facility's participation until the reason for the termination has been removed and there is a reasonable assurance that it will not occur.

(d) Extended and Followup Surveys.—There are no current requirements for extended and followup surveys under the Medicare or Medicaid statutes.

(e) Survey Protocol Consistency and Prohibition of Conflicts of Interest.—No provision.

(f) Survey Teams.—No provision.

(g) Validation Surveys.—No provision.

(h) Investigation of Complaints and Monitoring of Compliance.—No provision.

(i) Disclosure of Results of Inspections and Activities and Posting of Survey Results.—No provision.

(j) Special Federal Matching Payments for State Survey and Certification Requirements.—Medicare pays for survey and certification costs out of the Hospital Insurance Trust Fund.

The Medicaid program currently authorizes a 75 percent Federal matching rate to the States for costs attributable to compensation or training of skilled professional medical personnel and staff supporting such personnel. A portion of Medicaid nursing home survey costs fall into this category. Other survey-related expenditures under Medicaid are reimbursed at the 50 percent Federal matching rate for general administrative costs.

House bill

Section 9212.—

(a) State Requirement for Survey and Certification Process.—Amends the Medicare statute (relating to the use of State agencies to determine compliance by providers with the Medicare conditions of participation) to require that in respect to extended care services furnished on or after July 1, 1989, the State must have in effect a survey and certification process for SNFs in the State which meets the requirements specified below.

(b) State and Federal Responsibility.—Requires that each State be responsible for certifying, in accordance with surveys (conducted as described below), the compliance of SNFs (other than facilities of the State) with the requirements of this bill relating to provision of services, residents' rights and administration. Requires the Secretary to be responsible for certifying, in accordance with the surveys, compliance of State-owned SNFs. Requires each State to conduct periodic educational programs for the staff and residents (and their representatives) of SNFs in order to present current regulations, procedures and policies under this section.

(c) Standard Surveys.—Requires each SNF to be subject to a standard survey conducted without prior notice. Provides for civil penalties not to exceed $2000 in the case of an individual who notifies (or causes to be notified) a SNF of the time and date on which such a survey is scheduled. Requires the Secretary to provide for imposition of the civil money penalties in a manner similar to that under current Social Security law. Requires the Secretary to review each State's procedures for the scheduling and conduct of annual standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey.

(1) Contents of Standard Survey.—Requires each standard survey to include an audit of a sample of the residents' assessments (as required above under this bill) to determine their accuracy, a survey of the quality of care furnished as measured by indicators of medical, nursing and rehabilitative care, using interviews and observations of a case-mix stratified sample of residents, and a review of the facility's compliance with certain requirements of this bill relating to provision of service, resident's rights and administration).

(2) Frequency of Standard Surveys.—Requires each SNF to be subject to a standard survey not later than 15 months after the

date of the previous standard survey. Requires that the Statewide average interval between surveys of SNFs not exceed 12 months. Provides that a standard survey may be done within 2 months of any change in ownership, administration or management, in order to determine whether the change has resulted in any decline in the quality of care.

(d) Extended and Followup Surveys.—Requires that a SNF be subject to an extended survey if a survey team determines that, because of the poor quality of care found during a standard survey, it would recommend termination of participation of the SNF from Medicare or the appointment of temporary management. Requires the survey team, in such an extended survey, to review and identify the policies and procedures which produced the poor quality of care and to determine whether the SNF has complied with all of the requirements of this bill relating to provision or services, residents' rights and administration. Requires the review to include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, in-service training and, if appropriate, contracts with consultants. Provides for any other facility to be subject to such an extended survey or a partial extended survey at the Secretary's or State's discretion.

(e) Survey Protocol, Consistency and Prohibition of Conflicts of Interest.—Requires that standard and extended surveys be based upon a protocol which the Secretary has developed, tested and validated not later than Jan. 1, 1989, and by individuals of a survey team who meet such minimum qualifications as the Secretary establishes not later than Jan. 1, 1989. Provides that the failure of the Secretary to develop, test or validate such protocols or to establish such minimum qualifications does not relieve any State of its responsibility (or the Secretary of his responsibility) to conduct surveys. Requires each State and the Secretary to implement programs to measure and reduce inconsistency in the application of survey results among surveyors. Prohibits a State from using as a surveyor an individual who is serving (or who has served within the previous 2 years) as a consultant to any SNF respecting compliance.

(f) Survey Teams.—Requires surveys to be conducted by a multidisciplinary team of professionals (including a registered nurse and others selected in accordance with regulations of the Secretary). Requires that each State maintain and utilize a specialized team for identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against chronically substandard SNFs. Requires that this team include (or have prompt access to) an attorney, auditor, and appropriate health care professionals. Requires each State to provide each member of a survey team with comprehensive preservice training, and in addition to a minimum of 40 hours of continuing education with respect to the conduct of such surveys annually (as approved by the Secretary). Prohibits an individual from serving as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(g) Validation Surveys.—Requires the Secretary to conduct sample onsite surveys of SNFs in each State, within 2 months of

the State surveys, in a sufficient number to allow inferences about the adequacies of each State's surveys. Requires that in conducting these surveys, the Secretary use the same protocols as are required for the States. If the State has determined that a SNF meets the requirements of this legislation but the Secretary determines otherwise, the Secretary's determination is binding and supersedes that of the State survey. Provides that if the Secretary finds that a State's survey and certification performance is not adquate or that a State has failed to perform surveys as required, the Secretary may provide for an appropriate remedy, which may include the training of the survey team or the designation of another State to perform survey and certification activities.

Provides that if the Secretary has reason to question the compliance of a SNF with any of the specified requirements of this bill, the Secretary may conduct a survey of the facility and, on that basis, make independent and binding determinations about the extent to which the SNF meets the requirements.

(h) Investigation of Complaints and Monitoring of Compliance.—Requires each State to maintain procedures and adequate staff to investigate complaints of SNF violations of requirements, and monitor on-site, on a regular basis, (daily or more or less frequently) a SNF's compliance with the requirements of this legislation if: (1) the facility has been found to be out of compliance and is in the process of correcting deficiencies to achieve compliance; (2) the facility was previously found not to be in compliance, has corrected deficiencies to achieve compliance, and verification of continued compliance is indicated; or (3) the State has reason to question the compliance of the facility.

(i) Disclosure of Results of Inspections and Activities and Posting of Survey Results.—Requires each State and the Secretary to make available to the public information respecting all surveys and certifications of SNFs, copies of cost reports of such facilities filed under Medicare or Medicaid, copies of statements of ownership as required under the Social Security Act.

Requires that if a State finds that a SNF has provided poor quality of care, it must notify the attending physician of each resident with respect to which such finding is made, and the State board responsible for licensing of the SNF administrator.

Requires that each State provide its State Medicaid fraud and abuse control unit with access to all information of the State agency responsible for surveys and certifications. Amends the Medicare statute relating to State survey and certification to require that the results be posted in a place readily accessible to patients and patients' representatives.

(j) Special Federal Matching Payments for State Survey and Certification Requirements.—No provision.

(k) Revision of Penalty Provisions and Miscellaneous Conforming Amendments.—No provision.

(l) Development of Criteria for the Evaluation of Plans of Correction.—No provision.

Section 4113.—

(a) State Requirement for Survey and Certification Process.—Amends the Medicaid statute relating to survey and certification by adding a new provision as specified below.

(b) State and Federal Responsibility.—Similar provision except (1) applies to Medicaid, (2) specifies that the Secretary be responsible for certifying compliance of "public" facilities with the requirments of the bill, and (3) does not contain requirement for State to conduct periodic educational programs for staff and residents.

(c) Standard Surveys.—Similar provision except applies to nursing facilities under Medicaid and requires that each facility be subject to an annual standard survey.

(1) Contents of Standard Survey.—Similar provision, but requies that the survey include dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment. Also specifies that both audit and survey of quality be based on a case-mix stratified sample of residents. Does not require that standard survey include a review of the facility's compliance with certain requirements relating to provision of service, etc.

(2) Frequency of Standard Surveys.—Similar provision except applies to nursing facilities under Medicaid and includes changes in directors of nursing as a reason for conducting a survey to determine whether the change has resulted in any decline in quality.

(d) Extended and Followup Surveys.—Requires that each nursing facility that is found, under a standard survey, to have provided substandard quality of care be subject to an extended survey to identify policies and procedures that produced such quality and to determine whether the facility has complied with the requirements of this legislation. Requires that the extended survey be conducted immediately after the standard survey (or, if not practical, not later than two weeks after the completion of the standard survey). Provides that this measure does not require an extended or partial survey as a prerequisite to imposing a sanction against a facility on the basis of findings in a standard survey. Provides for any other facility to be subject to an extended survey or a partial extended survey at the Secretary's or State's discretion.

(e) Survey Protocol, Consistency and Prohibition of Conflicts of Interest.—Similar provision, except requires that the Secretary develop, test and validate the survey protocol by April 1, 1990. Requires that the individuals meet minimum qualifications established by the Secretary by April 1, 1990. Prohibits a State from using a surveyor who is serving or who has served as a member of the staff or as a consultant to the facility surveyed.

(f) Survey Teams.—Requires the Secretary to provide for the training of State and Federal surveyors in the use of the assessment instruments (described above in this legislation).

(g) Validation Surveys.—Similar provision except requires the Secretary to conduct onsite surveys of a representative sample of nursing facilities. Provides that if the Secretary finds, on the basis of his surveys, that a State's survey and certification performance is not adequate, the Secretary must provide for a reduction of Federal matching payments for these purposes. Specifies that this reduction would be equal to 33 percent of the ratio of the total number of residents in noncomplying facilities surveyed by the Secretary to the total number of residents in surveyed facilities. Provides that a State may obtain reconsideration and review of the Secretary's findings.

(h) Investigation of Complaints and Monitoring of Compliance.—Similar provision but applies to nursing facilities under Medicaid.

(i) Disclosure of Results of Inspection and Activities and Posting of Survey Results.—Similar provision except applies to nursing facilities under Medicaid. Also requires public disclosure of information supplied under Medicaid State plans about certain subcontractors' ownership and certain business transactions Also, requires each State to notify the State long-term care ombudsman of the State's finding of noncompliance. Specifies that attending physicians and State licensing boards be notified of a finding of "substandard," rather than "poor," quality of care.

(j) Special Federal Matching Payments for State Survey and Certification Requirements.—Provides special Federal matching payment rates for States' survey and certification activities (as found necessary by the Secretary for the proper and efficient administration of the State plan): 90 percent of sums expended in FY1990, 85 percent in FY1991, 80 percent in FY1992, and 75 percent thereafter.

Provides that expenses incurred by the State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to Medicaid be matched at the administrative matching rate of 50 percent.

(k) Revision of Penalty Provisions and Miscellaneous Conforming Amendments.—Repeals various requirements relating to surveys, inspections of care, and certification and recertification of need for SNF and ICF care. Specifies, however, that such amendments shall not apply until such date (not earlier than Oct. 1, 1990) when the Secretary determines that the State has specified the resident assessment instrument which should be used by facilities and the State has begun conducting standard and extended surveys.

(l) Development of Criteria for the Evaluation of Plans of Correction.—No provision.

Senate amendment

(a) State Requirement for Survey and Certification.—Amends the Medicare statute (relating to the use of State agencies to determine compliance by providers with Medicare conditions of participation) to require that the Secretary's agreement with the State include SNFs and ICFs among those facilities surveyed by State agencies. Adds additional requirements for the survey and certification process for SNFs and ICFs as described below.

(b) State and Federal Responsibility.—Similar provision except applies to SNFs and ICFs and does not contain requirement for States to conduct periodic educational programs for staff and residents.

(c) Standard Surveys.—Requires that each SNF and ICF be subject to a standard survey of the facility's compliance with applicable requirements specified in law. Specifies that standard surveys be conducted on an unannounced basis.

(1) Contents of Standard Survey.—Requires that a standard survey include audits of a sample of residents' assessments as required above under the bill.

(2) Frequency of Standard Surveys.—Provides that a standard survey may be conducted upon any change of ownership and must

otherwise be conducted not later than 15 months after the date of the previous survey. Also requires that the frequency of standard surveys be based upon the degree to which a facility was found, in the most recently conducted survey, to be in compliance with the requirements of law. Requires that the Statewide average interval between surveys not exceed 12 months.

(d) Extended and Followup Surveys.—Requires that each SNF and ICF, found to have performed poorly in one or more requirements of law, be subject to an extended survey. Provides that any other facility may be subject to an extended survey at the Secretary's or State's discretion.

(e) Survey Protocol, Consistency and Prohibition of Conflicts of Interest.—Requires that all surveys be based upon regulations the substance of which the Secretary has developed, tested, and validated by Jan. 1, 1990. Requires each State to implement programs to measure and reduce inconsistency in the application of survey results among surveyors. Prohibits a State from using as a member of a survey team any individual who is serving (or has served in the previous 2 years) as an employee of or consultant to the particular facility being surveyed. Also requires that the Secretary, together with each State survey agency, develop written procedures for review of survey findings in cases where the provider of services has substantial disagreement with such findings. Requires that such procedures shall include a system for resolving significant differences in professional judgments about the appropriateness and quality of care (but in no event shall delay the timing of any enforcement action).

(f) Survey Teams.—Similar to Ways and Means provision except (1) applies to SNFs and ICFs; (2) specifies "initial" training rather than "preservice" training for members of the team and does not require State to provide training; (3) requires that surveys be conducted with such teams not later than Jan. 1, 1990; (4) specifies "duties" rather than "purpose" of specialized survey team; and (5) prohibits "health care professionals" rather than "individuals" from serving on team unless he or she has completed an approved training and testing program and has experience or education in gerontological nursing or long-term care and in interviewing residents with communicative impairments.

(g) Validation Surveys.—Requires the Secretary to conduct surveys of SNFs and ICFs in each State in a sufficient number to allow inferences about the adequacy of each State's surveys. Requires that these surveys be conducted within one month of the most recently conducted State survey of the facility. Also requires that the number of these surveys amount to no fewer than five percent of the facilities surveyed by the State in a year (or no fewer than five facilities). Provides that if the results of the Secretary's survey differ from the State's, then the Secretary's results will be conclusive for purposes of a determination about compliance.

Also requires the Secretary, no later than one year after the date of enactment, to prescribe by regulation (1) performance and outcome standards to evaluate and assure the effectiveness of State survey activities (including standards to evaluate the general improvement in quality of care in certified facilities, how the findings from such activities compare with the Secretary's review findings,

the appropriateness and effectiveness of State enforcement action, the extent to which repeat deficiencies occur, the extent to which deficiencies are not corrected in a timely manner, and complaint handling activities); and (2) administrative sanctions to be imposed on State survey agencies for poor performance in relation to the proportion of beneficiaries placed at risk by such performance.

See also related provision, section 4054 "Federal Review of State Inspection of Care Determinations," of Senate bill (item #20 in Medicare-Medicaid comparison).

(h) Investigation of Complaints and Monitoring of Compliance.—Requires each State to maintain procedures and adequate staff to investigate complaints of violations by facilities of applicable requirements.

(i) Disclosure of Results of Inspections and Activities and Posting of Survey Results.—Requires that each State and the Secretary make available to the public information with respect to all surveys and certifications of SNFs and ICFs and information with respect to cost reports of such facilities filed under Medicare or Medicaid.

Requires that State survey agencies ensure that survey procedures are coordinated with the activities of State fraud and abuse units, resident protection and advocacy units, and the State Medicaid agency.

Requires that State survey agencies enter into a written agreement with the appropriate State long-term care ombudsman to provide for information exchange, training, case referral, and prompt notification of the ombudsman of any adverse action to be taken by the agency against a SNF or ICF. Requires that the agreement provide for access by the ombudsman to any inspection reports and notices of deficiencies, sanctions, or adverse determinations issued by the agency, and, consistent with Federal and State laws governing confidentiality of information, to investigate reports and findings made on account of complaints of ombudsman.

Amends the Medicare statute relating to State survey and certification to require that the results of surveys of SNFs and ICFs be posted in a place readily accessible to residents and residents' representatives.

Also amends title XI of the Social Security Act, relating to disclosure of validation survey reports and other formal evaluations of providers, to shorten the period of time, from 60 to 30 days, that the provider would have to review the report and make comments on it before the report is made public. However, the Secretary may release the report to a State long-term care ombudsman or a designee before the end of the 30-day period.

(j) Special Federal Matching Payments for State Survey and Certification Requirements.—No provision.

(k) Revision of Penalty Provisions and Miscellaneous Conforming Amendments.—No provision.

(l) Development of Criteria for the Evaluation of Plans of Correction.—Requires the Secretary to develop and implement criteria and procedures for the evaluation of plans of correction submitted by institutions seeking compliance with the standards for SNFs and ICFs. Requires that the criteria and procedures be designed (1) to maximize specifically in the plans, (2) to require on-site evalua-

tion of the implementation of plans dealing with deficiencies relating to patient care, and (3) to emphasize the need for correction to provide for permanent compliance with the standards.

Conference agreement

The conference agreement includes both House provisions with an amendment incorporating Senate provisions to require the Secretary to conduct validation surveys with respect to no fewer than 5 precent of the facilities surveyed by the State in a year but in no case less than 5 facilities in a State.

In addition, the conference agreement includes, with regard to Medicare, a requirement that the Secretary shall provide, when the survey and certification performance is not adequate, for an appropriate remedy, which may include the training of the survey team. For purposes of Medicaid only, the Secretary shall provide for a reduction of the payment otherwise made to the State when the survey and certification performance is not adequate.

Furthermore, the conference agreement requires, with regard to nurse aide registries, that the State provide through the survey and certification agency for a process for the receipt, review, and investigation of allegations of resident neglect and abuse (including misappropriation of personal funds) by a nurse aide. The conferees intend that any nurse aide against whom an allegation of neglect and abuse (or misappropriation of personal funds) is made shall be given an opportunity for a hearing before the State survey and certification agency. No nurse aide's name shall be placed on the registry until the individual has been notified of the right to a hearing, and either a hearing has taken place and the allegations have been substantiated, or the individual has waived, after being given a reasonable opportunity, his/her right to a hearing. Only a survey and certification agency, based on documented findings, shall place the individual's name on the registry. The conferees intend that a facility, resident, ombudsman, or any other individual or organization may contact the survey team, and the survey team shall investigate the allegation.

The conferees also suggest that the Secretary consider, in establishing criteria by which the standard survey will measure quality of care furnished by a facility, such factors as vision and hearing; activities of daily living; use of physical restraints; accidents; nutrition and fluid intake; cognitive, behavioral, and social functioning; use of urinary catheters, prevention and care of pressure ulcers; and use of drugs.

(16) Enforcement Process and Intermediate Sanctions (Section 9213 of Ways and Means; section 4114 of Energy and Commerce; Section 4051(d) of Senate amendment)

Present law

Under the current Medicare and Medicaid statutes, when a finding is made that a nursing home no longer substantially meets the law's requirements and standards of care, and deficiencies do not immediately jeopardize the health and safety of its patients, the Secretary and/or State may, in lieu of termination, refuse to make payments on behalf of individuals later admitted to the facility. However, if it is determined that the deficiencies do immediately

jeopardize the health and safety of the facility's patients, the Secretary or State must terminate the facility's participation in the program. If the decision is made to deny program payment instead of terminating a facility's participation, the facility must achieve substantial compliance with program requirements or be found to have made a good faith effort to correct its deficiencies by the end of the eleventh month following the month when a decision is made to deny payment. Final regulations implementing these provisions became effective August 4, 1986.

Currently, there are no statutory requirements for the coordination of conflicting or overlapping State and Federal remedies. However, under current law Federal remedies do take procedence over State remedies.

House bill

Section 9213.—

(a) General Requirements.—Amends the current Medicare law relating to State enforcement of Medicare conditions of participation to require the State to establish and apply the remedies as specified below to SNFs that fail to meet the requirements of this legislation.

(b) Requirements for State Enforcement Process.—Requires that if a State finds that a SNF no longer meets the requirements of this bill (relating to provision of services, patients' rights and administration) and further finds that the facility's deficiencies immediately jeopardize the health or safety of its residents, the State must take immediate action to remove the jeopardy and correct the deficiencies (including the appointment of temporary management) or terminate immediately the facility's Medicare participation and, in addition, may also provide for one or more of the remedies described below. Provides that if the deficiencies do not immediately jeopardize the health or safety of its residents, the State may terminate the facility's participation or may provide, in addition, for one of the remedies described below. Provides that this provision does not restrict the remedies available to a State to remedy a SNF's deficiencies.

(c) Specific State Remedies.—

(1) Required Remedies.—Requires, with certain exceptions (see alternative remedies under 2B), that each State establish by law (statute or regulation) at least the following remedies: (A) denial of payment under Medicare with respect to any individual admitted to the SNF after the required notices are provided to the public and the SNF; (B) a civil money penalty assessed and collected for each day in which the SNF remains out of compliance; (C) the appointment of temporary management to oversee the operation of the SNF and to assure the health and safety of its residents, where there is a need for temporary management while there is an orderly closure of the SNF, or improvements are made in order to bring it into compliance; and (D) the authority, in the case of an emergency, to close the SNF, to transfer residents in that SNF to other facilities, or both.

(2) Deadline and Guidance.—(A) Requires that as a condition of entering into agreement with Medicare (and with respect to determining on or after Oct. 1, 1989 whether institutions qualify as

SNFs under Medicare) that each State establish the remedies described above by July 1, 1989. Requires by Oct. 1, 1988 that the Secretary provide, through regulations or otherwise, guidance to the States in establishing the remedies. Provides that the failure of the Secretary to provide this guidance does not relieve a State of the responsibility for establishing the remedies. (B) Provides that a State may establish alternative remedies (expect termination of participation) other than those described above, if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance as those specified above.

(3) Assuring Compliance.—Provides that if a SNF has not complied with any of the requirements (relating to provision of services, residents' rights and administration) within 6 months after the SNF is found to be out of compliance, the State must deny Medicare payments for all individuals, who are admitted to the SNF after the date on which noncompliance was established.

(4) Funding.—No provision.

(5) Repeated Noncompliance.—No provision.

(6) Incentives for High Quality Care.—No provision.

(d) Secretarial Authority.— Provides that with respect to a State SNF, the Secretary has the authority and duties of a State in respect to imposing sanctions and remedies. Provides that for any other SNF in a State, the Secretary may in specified circumstances, exercise the authority of the State. Provides that in exercising authority to impose civil money penalties, the Secretary must base the amount of the penalty on the severity and frequency of the noncompliance and the size of the SNF and may not impose a penalty that exceeds $10,000 for each day of noncompliance. Provides that the Secretary impose and collect such penalties in the same manner as they are imposed and collected under the relevant provision of the Social Security Act.

In addition, see (f), (g), and (h) below.

(e) Effective Period of Denial of Payment.—Provides that a finding to deny payments would terminate when the State or Secretary (or both) finds that the SNF is in compliance.

(f) Remedies Where State or Secretary Finds Noncompliance and Immediate Jeopardy.—Provides that if either the State or the Secretary finds that a SNF has not met the requirements of this bill (relating to provisions of services, patients' rights, and administration) and finds that the failure immediately jeopardizes the health or safety of its residents, the State must take immediate action to remove the jeopardy and correct the deficiency (including the appointment of temporary management and the denial of payment for new residents until the SNF is in compliance). Provides that if the State determines that if the State determines that it is necessary to terminate immediately the SNF's participation agreement, the State must provide for the safe and orderly transfer of the Medicare residents consistent with the requirements for patients' rights in case of transfer or discharge (as specified in this bill).

(g) Special Rules where the Secretary and State Disagree on Finding of Noncompliance.—(1) Provides that if the Secretary finds a SNF in compliance but a State finds that the SNF is out of compliance, and if the failure does not immediately jeopardize the health

and safety of the residents, then the State's findings control and the remedies imposed by the State apply. (2) Provides that if the Secretary finds a SNF out of compliance but the State has not, and if the failure does not immediately jeopardize the health and safety of the residents, then the Secretary may impose remedies (other than termination of participation).

(h) Special Rules for Enforcement Actions Where the Secretary and the State find Noncompliance But Disagree on Corrective Actions.—

(1) General Rules.—Provides that if both the Secretary and the State find a SNF out of compliance and both find that its participation should be terminated, but neither finds that its deficiency immediately jeopardizes the health and safety of its residents, then the State's determination of corrective actions and timing of these actions takes precedence over determinations by the Secretary so long as such actions do not occur more than 6 months after the date of the finding of noncompliance.

(2) Construction.—Provides that the remedies provided under this section are in addition to those otherwise available under State or Federal law and are not to be construed as limiting those other remedies. Provides that the following remedies may be imposed while a hearing is pending: denial of payment, appointment of temporary management, or closing of the facility.

(i) Sharing of Information.—Provides that notwithstanding any other provision of law, all information concerning SNFs required by this section to be filed with the Secretary or a State agency must be made available to Federal or State employees for purposes consistent with effective administration of Medicare and Medicaid programs.

Section 4114.—

(a) General Requirements.—Provides for revisions of current Medicaid law regarding enforcement of compliance with the requirements for Medicaid participation as specified below.

(b) Requirements for State Enforcement Process.—Similar provision except specifies that findings of deficiency be based on a standard, extended or partial survey, or otherwise, and applies to requirements for nursing facilities under Medicaid. Also specifies that for immediate jeopardy cases, the State must take immediate action to remove the jeopardy and correct deficiencies "through" the appointment of temporary management or terminate the facility. For non-immediate jeopardy cases, the State may terminate "and" may provide for additional remedies. Also provides that if a State finds that a nursing facility meets the requirements but, as of a previous period, failed to meet them, the State may impose a civil money penalty for the days in which the facility was out of compliance.

(c) Specific State Remedies.—

(1) Required Remedies.—Similar provision, except that it applies to nursing facilities under Medicaid. Provides that the remedy of the civil money penalty be assessed and collected with interest. Provides that the funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil penalty for specified activities relating to resident assessments and survey and certification) be applied to the protection of

the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds that are lost. Finally, requires that in the application of the remedy of appointing temporary management, that the management not be terminated until the State has determined that the facility has the management capability to ensure continued compliance.

(2) Deadline and Guidance.—Similar provision except applies as a condition for approval of a State plan for calendar quarters beginning on or after Oct. 1, 1989.

(3) Assuring Compliance.—Similar provision except applies to facilities under medicaid and provides for denial of Medicaid payments if the facility fails to comply within 3 months of the determination of noncompliance.

(4) Funding.—Provides that reasonable State costs for exercising the temporary management of emergency closure remedies would be eligible for Federal Medicaid matching funds at the administrative matching rate of 50 percent.

(5) Repeated Noncompliance.—Requires in the case of a facility which, on 3 consecutive standard surveys, that the State deny payments for newly admitted patients and monitor the facility (as specified by this bill under requirements for monitoring of compliance) until it has demonstrated to the satisfaction of the State that it is in compliance and that it will remain in compliance.

(6) Incentives for High Quality Care.—Provides that in addition to the other remedies specified above, a State may establish a program to reward, through public recognition, incentive payments or both, nursing facilities that provide the highest quality care to residents entitled to Medicaid. Provides that State costs for carrying out such a program would be eligible for Federal matching payments at a rate of 50 percent.

(d) Secretarial Authority.—

(1) Similar provision in respect to State nursing facilities, except applies to nursing facilities under Medicaid and does not include the authority to close the facility and/or tranfer residents. Provides that for other nursing facilities in a State, that if the Secretary finds a facility not in compliance and further finds that the facility's deficiencies immediately jeopardize the health or safety of its residents, the Secretary must take immediate action to remove the jeopardy and correct the deficiencies by providing for temporary management or by terminating the facility's participation in Medicaid and may also provide for other remedies described below. Provides that if the deficiencies do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described below. Provides that this does not restrict the remedies available to the Secretary to remedy a facility's deficiencies.

In addition, see (f), (g), and (h) below.

Also provides that if the Secretary finds that a nursing facility meets requirements but, as of a previous period, failed to meet the requirements, the Secretary may impose a civil money penalty for the days in which the facility was out of compliance.

(2) Specifies remedies available to the Secretary. Provides that he may take the following actions with respect to a finding that a facility has not met an applicable requirement: (A) the Secretary may deny further payments to the State for medical assistance to all individuals in the facility or to individuals admitted after the effective date of the finding; (B) the Secretary may impose a civil money penalty not to exceed $10,000 for each day of noncompliance and the Secretary must impose and collect such a penalty in the same manner as they are imposed and collected under the relevant Social Security law; (C) in consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility to assure the health and safety of its residents, where there is a need for temporary management while there is an orderly closure of the facility, or improvements are made in order to bring the facility into compliance. Prohibits termination of the temporary management until the Secretary has determined that the facility has the management capability to ensure continued compliance.

(3) Provides that the Secretary may continue Medicaid matching payments to a State for care provided by a facility not in compliance, for no more than 6 months, if: (A) the State survey agency finds that it is more appropriate to take alternative action to assure compliance than termination of certification; (B) the State has submitted a plan and timetable for corrective action to the Secretary for approval which the Secretary approves; and (C) the State agrees to repay the Federal payments if the corrective action is not taken in accordance with the approved plan and timetable. Requires the Secretary to establish guidelines for approval of corrective actions requested by the States.

(e) Effective Period of Denial of Payment.—Similar provision but applies to nursing facilities under Medicaid.

(f) Remedies Where State or Secretary Finds Noncompliance and Immediate Jeopardy.—Similar provision except applies to requirements for nursing facilities under Medicaid. Requires the State and the Secretary to notify the other of such finding, and the State or the Secretary to take immediate action to remove the jeopardy and correct the deficiencies through appointment of temporary management or termination of participation. Requires that in the case of termination, the State must provide for the safe and orderly transfer of the Medicaid residents.

(g) Special Rules where the Secretary and State Disagree on Finding of Noncompliance.—Similar provision, except applies to facilities under Medicaid. Provides that in the latter case, the Secretary may impose certain remedies and is required (pending any termination by the secretary) to permit Federal matching payments.

(h) Special Rules for Enforcement Actions Where the Secretary and the State find Noncompliance But Disagree on Corrective Actions.—

(1) General Rules.—Similar provision except applies to nursing facilities under Medicaid. Provides that if both the Secretary and the State find a facility out of compliance, that both find that the failure does not immediately jeopardize the health and safety of the residents, but only the Secretary finds that the facility's participation should be terminated, then the Secretary must (pending

any termination by the Secretary) permit continuation of Federal matching payments. Provides that if the State but not the Secretary finds that the facility's participation should be terminated, the State's decision to terminate and the timing of the termination applies. If either the Secretary or the State establish remedies in addition or as an alternative to termination, then such other remedies apply. If both the Secretary and the State establish other remedies than termination, only those of the Secretary apply.

(2) Construction.—Similar provison except specifies that these remedies do not limit other remedies, including any remedy available to an individual under common law.

(i) Sharing of Information.—Similar provision except also applies to investigations by State Medicaid fraud control units.

Senate amendment

(a) General Requirements.—Amends the current Medicare law relating to the Secretary's enforcement of compliance with the requirements for participation in Medicare and Medicaid by SNFs. Amends also the Medicaid law relating to State enforcement of compliance with requirements for ICF participation in Medicaid.

(b) Requirements for State Enforcement Process.—Similar provision except requires that if a State determines that a SNF or ICF (other than an intermediate care facility for the mentally retarded) that is certified for participation under Medicaid no longer meets the applicable requirements and further determines that the facility's deficiencies do not immediately jeopardize the health and safety of its residents, the State may, instead of terminating the facility's participation, impose one or more of the sanctions specified below.

(c) Specific State Remedies.—

(1) Required Remedies.—Requires the State to develop and implement a range of intermediate sanctions to apply to facilities for which the deficiencies have been determined not to immediately jeopardize the health and safety of their patients. Requires these sanctions to include: (A) directed plans of correction; (B) the appointment of receivers (in accord with provisions specified below); and (C) one or more of the following sanctions: civil fines; on-site monitoring by an agency responsible for conducting certification surveys (with the costs of such monitoring to be paid by the facility without reimbursement); withholding or reducing amounts otherwise payable to the facility; and any other sanction designated or approved by the Secretary.

Requires the State to develop and implement specific criteria as to when and how each of these intermediate sanctions is to be applied; the amounts of any fines, and the severity of each of the penalties.

Requires the criteria to be designed to minimize the time between identification of violations and final imposition of the sanctions. Also requires that the criteria provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies. Provides that in accord with such criteria, the State may impose any sanction in lieu of, or in addition to, termination of participation.

Requires that where a State determines that a SNF or an ICF (other than an ICF/MR) that is certified for participation under its plan is chronically failing to meet substantially Medicare or Medicaid requirements, or determines that the facility's deficiencies immediately jeopardize the health and safety of its patients, the State shall give public notice of such determination, and the State may appoint a receiver to (A) oversee the operation of the facility; (B) establish and oversee the implementation of a correction plan to bring the facility into compliance by a date specified in the correction plan, and (C) assure the health and safety of the facility's patients during the facility's receivership period.

Requires that subject to current law relating to Medicaid facilities that are found to be out of compliance, that State Medicaid payment be made with respect to any services furnished by any such facility during any period of receivership ordered by the Secretary or the State.

Requires that public notice be given in any case in which such deficiencies are determined to be rectified.

(2) Deadline and Guidance.—No provision.

(3) Assuring Compliance.—No provision.

(4) Funding.—No provision.

(5) Repeated Noncompliance.—No provision, but see (c)(1) above relating to specific state remedies.

(6) Incentives for High Quality Care.—No provision.

(d) Secretarial Authority.—

(1) Requires the Secretary to develop and implement a range of intermediate sanctions to apply to facilities with deficiencies that have been determined not to immediately jeopardize the health and safety of their patients. Requires that such sanctions include: (A) directed plans of correction; (B) the appointment of receivers (as provided below); and (C) one or more of the following sanctions: civil fines; on-site monitoring by an agency responsible for conducting certification surveys (with the costs of such monitoring to be paid by the facility without reimbursement); withholding or reducing amounts otherwise payable to the facility under Medicare or Medicaid; and any other sanction designated or approved by the Secretary.

Requires the Secretary to implement specific criteria as to when and how each of these intermediate sanctions is to be applied; the amounts of any fines, and the severity of each of the penalties.

Requires the criteria to be designed to minimize the time between identification of violations and final imposition of the sanctions. Also requires that the criteria provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies. Provides that in accord with such criteria, the Secretary may impose any sanction in lieu of, or in addition to, termination of participation.

Requires that in any case where intermediate sanctions imposed by a State pursuant to this bill are in effect with respect to a facility, the Secretary shall review periodically (not less than once every 3 months) the effectiveness of such sanctions in promoting the correction of the deficiencies involved and shall withhold action unless the Secretary determines that such sanctions are ineffective or immediately jeopardize the health and safety of its patients.

(2) Requires that in any case where the Secretary determines that a SNF is chronically failing to meet substantially Medicare requirements or of the provider agreement, or determines that the facility's deficiencies immediately jeopardize the health and safety of its patients, the Secretary shall give public notice of such determination, and in the case of a SNF that is not in a period of State-ordered receivership, the Secretary may appoint a receiver to oversee the operation of the facility, establish and oversee the implementation of a correction plan to bring the facility into compliance with the applicable requirements of the State plan, Medicare, Medicaid and State licensing requirements by a date set forth in the correction plan; and assure the health and safety of the facility's patients during the receivership period.

(3) Requires that Medicare payment be made with respect to any services furnished by any such facility to patients who remain in the facility during any period of receivership ordered by the Secretary or the State.

(4) Provides that a period of State-ordered receivership with respect to a facility is a period during which the State has appointed a receiver to oversee the operation of the facility; the State has in effect a correction plan to bring the facility into compliance with the applicable requirements of the State plan, Medicare, Medicaid and State licensing requirements by a date set forth in the correction plan; and the State has taken measures to assure the health and safety of the facility's patients during the period.

(5) Requires that public notice be given in any case in which such deficiencies are determined to be rectified.

(6) Requires the Secretary to provide States with technical assistance in the development and implementation of sanctions authorized under this bill.

(e) Effective Period of Denial of Payment.—No provision (except that bill provides that such decisions are at the Secretary's discretion).

(f) Remedies Where State or Secretary Finds Noncompliance and Immediate Jeopardy.—No provision.

(g) Special Rules where the Secretary and State Disagree on Finding of Noncompliance.—No provision.

(h) Special Rules for Enforcement Actions Where the Secretary and the State find Noncompliance But Disagree on Corrective Actions.—

(1) General Rules.—No provision.

(2) Construction.—No provision.

(i) Sharing of Information.—No provision in "Enforcement" section of bill, but similar provision above in item #5(a)(5) under "Requirements Relating to Administration and Other Matters."

Conference agreement

The conference agreement includes both House provisions with an amendment incorporating Senate provisions to require both the State and the Secretary to specify criteria as to when and how intermediate sanctions are to be applied, the amount of any fines, and severity of each of the intermediate sanctions. The provisions also require these criteria to be designed so as to minimize the time between the identification of violations and final imposition of the

intermediate sanctions and to provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The conference agreement also incorporates a Senate provision authorizing a State to provide for other intermediate sanctions, such as directed plans of correction.

(17) Effective Dates (Section 9214(a) of Ways and Means; Section 4116(a) and 4116(b) of Energy and Commerce; Sections 4051(a)(7), (c)(6), and (d)(3) of Senate amendment)

House bill

Section 9214(a).—

Except as otherwise specifically provided, applies to extended care services furnished on or after Jan. 1, 1989.

Sections 4116(a) and 4116(b).—

Except as otherwise specifically provided in section 1921 of the Social Security Act, the amendments made by sections 4111 and 4113 (relating to nursing facility and survey and certification requirements), applies to nursing facility services furnished on or after Oct. 1, 1989, without regard to whether regulations are promulgated, except that the provision relating to requiring State medical assistance plans to specify the services included in nursing facility services (4111(b)) applies to calendar quarters beginning at least 6 months after enactment. Provides that the amendments made by section 4112 and 4114 apply to Medicaid payments for calendar quarters beginning on or after enactment, without regard to whether regulations are promulgated.

Provides that in applying amendments made by section 4114 for services furnished before Oct. 1, 1989, than any reference to a nursing facility is deemed a reference to a SNF or ICF (other than ICFs for the mentally retarded), and with respect to such a SNF or ICF, any reference to requirements is deemed a reference to specified sections of the Social Security Act.

Senate amendment

Except as otherwise specifically provided, effective as of the date of enactment. (The amendments made by section 4051(c) relating to survey and certification are effective Oct. 1, 1988. The amendments made by section 4051(a)(7) relating to preadmission screening and assessment for mentally ill and mentally retarded individuals is effective for services furnished on or after Jan. 1, 1988, except that the provisions as applied to ICFs relating to annual resident reviews apply in the case of facilities with more than 120 beds to services furnished on or after Oct. 1, 1988; in the case of facilities with more than 60 beds but less than 120, to services furnished on or after Oct. 1, 1990; and in the case of facilities with 60 beds or less, to services furnished on or after Oct. 1, 1992. The amendments made by section 4051(d)(3) relating to enforcement are effective Oct. 1, 1990.

Provides that in the case of a State Medicaid plan which the Secretary determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements of certain amendments of this bill, the State plan will not be regarded as failing to comply with these requirements solely on the basis of its failure to meet them before the first day of

first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment.

Conference agreement

The conference agreement in general reflects the House provisions regarding effective dates with some modifications.

(18) Waiver of Paperwork Reduction Act (Section 9214(b) of Ways and Means; Section 4116(c) of Energy and Commerce)

Present law

The Paperwork Reduction Act provides that each Federal agency systematically inventory information systems and implement procedures for assessing their paperwork and reporting burden. They are also required to assure that any collection of information is not duplicative with other agencies. There are additional provisions relating to the Office of Management and Budget and the assessment of the paperwork burden of proposed legislation.

House bill

Section 9214(b).—Provides that the requirements of the Paperwork Reduction Act do not apply to information required for purposes of carrying out this legislation and implementing the amendments made by this legislation.

Section 4116(c).—Similar provision.

Senate amendment

No provision.

Conference agreement

The conference agreement includes both House provisions.

(19) Personal Needs Allowance (Section 4115 of Energy and Commerce)

Present law

Under the current Medicaid statute, once an aged, blind or disabled individual residing in a SNF, ICF or hospital has been determined to be eligible for Medicaid, much of the individual's monthly income is applied to the cost of care. However, some amounts, including an allowance for clothing and other personal needs, are reserved for the use of the individual while in an institution. This allowance must be at least $25 a month for an aged, blind or disabled individual and $50 a month for an institutionalized couple, if both spouses are aged, blind and disabled or their income is considered to be available to each other in determining eligibility. For other individuals, regulations specify a reasonable amount set by the State, based on a reasonable difference in their personal needs from those of the aged, blind or disabled.

House bill

Section 4115.—

(a) Requiring Increase in Personal Needs Allowance.—Makes technical changes to the Medicaid statute relating to the monthly personal needs allowance for certain institutionalized, non-SSI indi-

viduals and couples. Provides that to meet the requirement for providing a personal needs allowance, the State plan must provide that, in the case of an institutionalized, non-SSI individual or couple, that in determining the amount of the individual's or couple's income to be applied monthly to the cost of care in an institution, that there be deducted from the monthly income (in addition to other allowances provided by the State plan) a monthly personal needs allowance which is reasonable in amount for clothing and other personal needs of the individual (or couple) while in the institution, and which is not less than the minimum monthly personal needs allowance. Provides that the minimum monthly allowance for 1988 is $35 for an institutionalized individual and $70 for an institutionalized couple (if both are aged, blind or disabled and their incomes are considered available to each other in determining eligibility.

Provides for a cost-of-living adjustment (rounded to the next highest multiple of $1) in following years, effective in Decembe of the previous year.

(b) Definitions.—Defines "institutionalized, non-SSI individual or couple" to mean an individual or married couple who is an inpatient in a hospital, SNF or ICF for which payments are made under Medicaid throughout a month, with respect to whom a SSI payment is not made under the Social Security Act, and who is determined to be eligible for medical assistance under the State plan.

Effective Date.—Applies to Medicaid payments on or after Jan. 1, 1988, without regard to whether or not final regulations have been promulgated. Provides that, for a State plan which the Secretary determines requires State legislation (other than legislation appropriating funds) in order to meet the additional requirements imposed by this provision, the plan is not to be regarded as out of compliance until immediately after the close of the first regular session of the State legislature that begins after the date of enactment.

Senate amendment

No Medicaid provision. See related SSI provision, section 4065 "Increase in Personal Needs Allowance for SSI Recipients," of Senate bill.

Conference agreement

The conference agreement includes the Senate amendment contained in the Supplemental Security Income portion of the bill.

(20) Report on Nursing Home Compliance with New Requirements (Section 4117 of Energy and Commerce)

Present law

No provision.

House bill

Section 4117.—Requires the Secretary to report to Congress annually on the extent to which nursing facilities are complying with the requirements of this bill (relating to provision of services, residents' rights, administration and preadmission screening for the mentally ill and mentally retarded) and the number and type of

enforcement actions taken by the States and the Secretary under the enforcement process amendments to the Medicaid statute of this legislation.

Effective date.—Enactment.

Senate amendment

No provision, but see provision below creating National Commission on Long-Term Care.

Conference agreement

The conference agreement includes the House provision.

(21) Establishment of Grant Program to Promote Quality of Care in SNFs (Section 4051(b) of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

(a) Creation of Grant Program.—Requires the Secretary to establish a program of grants to SNFs certified as Medicare providers to promote the development by SNF's of projects that enhance the quality of care or the quality of life of residents.

(b) Application Process.—Requires that a SNF that desires to receive a grant to implement such a project submit an application to the Secretary, at such time and in such form and manner as the Secretary may prescribe.

(c) Selection Process.—Requires that the Secretary take into account the following in determining which SNFs will receive grants: (1) the likelihood that the proposed project will achieve its stated objectives; (2) the likelihood that the proposed project will serve as a model for similar projects in other facilities; and (3) the degree to which the funds provided by a grant will be matched by funds from non-Federal sources; and (4) the support for the project by the ombudsman, the area agency on aging, nursing home residents and their families, nursing home staff, institutions of higher learning, and other providers of long-term care.

(d) Amount of Grants.—Limits a grant to a SNF under this provision to no more than $25,000 a year.

(e) Evaluation of Grant Program.—Requires a SNF receiving a grant to furnish to the Secretary such information as the Secretary may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purpose for which it was made. Requires the Secretary to submit a report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

(f) Authorization.—Authorizes to be appropriated from the Federal Hospital Insurance trust fund $2 million for each of fiscal year 1988, 1989, 1990.

Effective date.—Enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

(22) National Commission on Long-Term Care (Section 4051(g) of Senate Finance)

Present law

No provision.

House bill

No provision.

Senate amendment

(a) Creation of the Commission.—Amends Part A of title XI of the Social Security Act (relating to general provisions) by adding the following requirements for a National Commission on Long Term Care.

(b) Organization and Membership.—Requires the Director of the Office of Technology Assessment to provide for the appointment of a National Commission on Long-Term Care (referred to as the "Commission") to be composed of independent experts appointed by the Director (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service). Provides that the Commission consist of 13 members, to be first appointed no later than Oct. 1, 1988, for a term of 5 years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than 4 members expire in any one year.

Requires the membership of the Commission to provide expertise and experience in the provision and financing of long-term care. Requires the Director to seek nominations, and to select at least one member of the Commission, from each of the following categories: (1) Representatives of Federal and State licensing and certification agencies; (2) long-term care ombudsmen; (3) consumers; (4) representatives of organizations representing nursing homes; (5) representatives of home health agencies; (6) experts in long-term care policy; (7) registered professional nurses; (8) health care and allied professionals with experience relating to long-term care; (9) individuals representing organizations of employees of SNFs, ICFs, or home health agencies.

(c) Operation of the Commission.—Provides for application to the Long-Term Care Commission specified sections of the law relating to the Prospective Payment Assessment Commission.

(d) Purpose of Commission.—Provides that the purpose of the Commission is to advise the Congress with respect to (1) methods of assessing and ensuring quality of care in long-term care facilities and certifying such facilities and programs; (2) necessary and desirable changes in the programs for surveying and certifying such facilities and programs; (3) the costs, appropriate staffing, and reimbursement of such facilities and programs; (4) the effectiveness of Federal and State licensing and survey procedures and the enforcement of such procedures, and (5) maintaining and extending the access of individuals entitled to benefits under Medicare or Medic-

aid to long term care and home health services (including the effects of State certificate of need requirements). Also requires the Commission to investigate compliance with Federal Medicaid requirements in any State with long reimbursement rates for nursing home care that has a moratorium on nursing home beds.

(e) Required Meetings.—Requires the Commission to meet at least quarterly and to convene such work groups, conferences and public hearings as it considers necessary to assist in carrying out its responsibilities.

(f) Required Reports.—Requires that not later than Oct 1, 1990, the Commission submit to Congress and the Secretary a report setting forth recommendations with respect to (1) implemantation of a reimbursement system and staffing requirements for long-term care facilities under Medicare that is based on the level of patient needs or the acuity of a patient's condition, or both; and (2) methods of ensuring the access to long-term care of individuals entitled to long-term care benefits under Medicare, or under a State plan approved under Medicaid. Requires that not later than 9 months after the Commission submits its report, the Secretary submit to Congress proposed legislation to implement the recommendations set forth in the Commission's report.

(g) Additional Reporting Requirements.—Requires the Secretary to report annually to the Congress and the Secretary on the status of its studies and deliberations. Requires the report to set forth any recommendations that the Commission has developed in the preceding year with respect to matters relating to long-term care. Requires that, not more than 90 days after the Commission submits its first required report, the Secretary submit to Congress a report setting forth the manner in which the Secretary proposes to implement and recommendations set forth in the Commission's report accompanied proposed changes in law (if any) that the Secretary determines to be necessary to implement the Commission's recommendations.

(h) Authorization.—Authorizes to be appropriated from the Federal Hospital Insurance Trust Fund such sums as may be necessary to carry out the provisions of this section.

Requires the Commission to submit requests for appropriations in the same manner as the Office of Technology Assessment submits requests for appropriations, but accounts appropriated for the Commission shall be separated from amounts appropriated for the Office of Technology Assessment.

(i) Study of Compliance.—Requires the Commission to conduct a study of the compliance with Federal quality standards by nursing homes in States that the Commission selects that have low reimbursement rates for nursing homes under Medicaid and have moratoria or limits in effect on the number of nursing home beds.

Effective date.—Enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

(23) Final Regulations Implementing COBRA Provisions Relating to Intermediate Care Facilities for the Mentally Retarded (Section 4051(h) of Senate Finance)

Present law

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA, P.L. 99-272) provided that if the Secretary determined there were deficiencies with an ICF/MR, the facility could submit a plan to correct the deficiencies within 6 months, or submit a reduction plan for closing all or part of the facility within 36 months in order to eliminate any physical plant or staffing deficiencies. The Secretary was required to promulgate proposed implementing regulations within 60 days after enactment (April 7, 1986). Proposed regulations were promulgated on July 25, 1986, but final regulations have not been promulgated.

House bill

No provision.

Senate amendment

Requires the Secretary to publish final regulations within 30 days of enactment to implement the amendments made by section 9516 of COBRA of 1985. Provides that the regulations shall be retroactive to the date of enactment of COBRA.

Effective date.—Effective as if enacted on April 7, 1986.

Conference agreement

The conference agreement includes the Senate amendment.

F. MEDICAID

1. Medicaid Optional Coverage for Additional Low Income Pregnant Women and Children (Section 4101 of the House bill, Sections 4052(a), (d), and (f) of the Senate amendment)

Present law

(a) Optional Coverage.—OBRA (1986) allowed States, effective April 1, 1987, to offer Medicaid coverage to all pregnant women, infants up to age 1, and, on an incremental basis, children up to age 5 with incomes up to a State established level that does not exceed 100% of the Federal poverty line. For pregnant women, coverage is limited to pregnancy-related services and extends through 60 days following pregnancy. For infants and children up to age 5, coverage is identical to that offered such assistance recipients.

(b) State Option to Impose Premium.—Current law prohibits imposition of an enrollment fee, premium, or similar charge on services furnished to pregnant women or children.

(c) Certification of Medicaid Eligibility for Newborn Infants.—A child born to a woman eligible for and receiving Medicaid on the date of the child's birth is deemed eligible for Medicaid for one year so long as the child is a member of the woman's household and the woman remains eligible for assistance.

House bill

(a) Optional Coverage.—Permits States to extend coverage to pregnant women and infants (under one year of age) with incomes up to 185% of the Federal poverty line for the same family size.

(b) State Option to Impose Premium.—No provision.

(c) Certification of Medicaid Eligibility for Newborn Infants.—No provision.

Senate amendment

(a) Optional Coverage.—Permits States to extend coverage to pregnant women and infants (under one year of age) with incomes up to 160 percent of the Federal poverty line for the same family size.

(b) State Option to Impose Premium.—Requires the imposition of a monthly premium of $5.00 with respect to children and pregnant women covered under the optional coverage provisions (including those covered pursuant to Items 2 and 3 below) whose family income equals or exceeds 130% of the Federal poverty level for the same-sized family.

Prohibits States from requiring prepayment of the premium. Eligibility may not be terminated for failure to pay until such failure continues for at least 60 days. A State may waive the premium in cases of undue hardship. A State may use State or local funds from other programs for premium payments; such payments may not be counted as income to the individual.

(c) Certification of Medicaid Eligibility for Newborn Infants.—Specifies that during the period a child is deemed eligible under this provision, the Medicaid identification number of the mother is to serve as the identification number of the child. All provider claims are to be submitted and paid under this number (unless the State issues a separate identification number for the child).

Conference agreement

(a) Optional Coverage.—The conference agreement follows the House bill.

(b) State Option to Impose Premium.—The conference agreement follows the Senate amendment with a modification. States could, at their option, impose a monthly premium on pregnant women and infants covered under this provision. The amount of the premium could not exceed 10 percent of the amount by which the gross income of the pregnant woman or infant, less child care expenses, exceeds 150 percent of the Federal poverty level for a family of the relevant size.

(c) Certification of Medicaid Eligibility for Newborn Infants.—The conference agreement follows the Senate amendment.

Effective date.—Applies with respect to medical assistance furnished on or after July 1, 1988.

2. ALLOWING ACCELERATED COVERAGE OF CHILDREN UP TO AGE 5

(Section 4102 of the House bill, Section 4052(b) of the Senate amendment)

Present law

OBRA (1986) allowed States, effective April 1, 1987, to extend Medicaid coverage, to pregnant women and infants up to age one with incomes up to a State-established level that does not exceed 100% of the Federal poverty line. Beginning October 1, 1987, States may increase the age level for children by one in each fiscal year until all children up to age 5 are included. A State cannot elect to cover one age group unless children in all younger age groups are covered.

House bill

Permits States to accelerate coverage of children under age 5 by permitting them to cover children under age 2, 3, 4, or 5 (as selected by the State) who are born after September 30, 1983.

Senate amendment

Same as House bill, except adds an additional conforming change.

Conference agreement

The conference agreement follows the House bill.

Effective date

Applies to medical assistance furnished on or after July 1, 1988.

3. COVERAGE OF CHILDREN UP TO AGE 8

(Section 4103 of the House bill, Section 4052(c) of the Senate amendment)

Present law

(a) *Mandatory coverage.*—States are required to extend Medicaid coverage to all children under age 5 born after September 30, 1983 who meet AFDC income and resources requirements.

(b) *Optional coverage.*—OBRA (1986) allows States to extend Medicaid coverage, effective April 1, 1987, to pregnant women and infants up to age one with incomes up to a State-established level that does not exceed 100% of the Federal poverty line. Beginning October 1, 1987, States may increase the age level by one in each fiscal year until all children up to age 5 are included. A State cannot elect to cover one age group unless children in all younger age groups are covered.

House bill

(a) *Mandatory coverage.*—Extends the mandatory coverage requirement to children under age 8 born on or after September 30, 1983. During FY89, the requirement applies to children under age 6 and during FY90, the requirement applies to children under age 7.

(b) *Optional coverage.*—Extends optional coverage of children by permitting States (in addition to the expanded coverage authorized under Item 2, above), to cover children under age 6, 7, or 8 (as selected by the State) who are born after September 30, 1983.

Senate amendment

(a) *Mandatory coverage.*—Extends the mandatory coverage requirement to children through age 6 born on or after September 30, 1983.

(b) *Optional coverage.*—Extends optional coverage of children by permitting States (in addition to the expanded coverage authorized under item 2, above), to cover children up through age 8 (as selected by the State) who are born after September 30, 1983.

Conference agreement

(a) *Mandatory coverage.*—The conference agreement follows the Senate amendment.

(b) *Optional coverage.*—The conference agreement follows the Senate amendment.

Effective date

Applies to medical assistance furnished on or after July 1, 1988.

4. DEMONSTRATION PROJECTS TO IMPROVE ACCESS TO NEEDED PHYSICIAN SERVICES BY PREGNANT WOMAN AND CHILDREN

(Section 4104 of the House bill, Section 4105 of the Senate amendment)

Present law

(a) The Secretary has general authority to waive certain program requirements as necessary to conduct demonstration projects.

(b) States are required to meet certain statutory requirements in order to be eligible for Federal matching payments. Under the "freedom-of-choice" provision a beneficiary may obtain services from any provider or person qualified and willing to perform the service. Under the "comparability" requirement, services must be equal in amount, duration, and scope for all categorically needy groups (with certain exceptions, generally based on age).

House bill

(a) Authorizes the Secretary to provide for demonstration projects by States to reduce infant mortality and early childhood morbidity. The projects are to improve access to obstetricians and pediatricians for eligible pregnant women and children under Medicaid.

The projects are to incorporate innovative approaches to increasing participation of obstetricians under Medicaid by such means as:

(i) improving compensation by increasing payment rates, expediting reimbursement, and using innovative payment mechanisms including global fees for maternity and pediatric services (with guaranteed periodic payments);

(ii) assisting in securing, or paying for, medical malpractice insurance or otherwise sharing in the liability risk;

(iii) decreasing unnecessary administrative burdens in submitting claims or securing authorization for treatment;

(iv) guaranteeing continuity of coverage, and expediting eligibility determinations, for eligible pregnant women and children served by such physicians; and

(v) covering medical services to meet the needs of high-risk pregnant women and infants.

Specifies that the Federal matching rate for demonstration projects is to be increased by 25 percentage points over the amount otherwise applicable. In no case can the matching percentage exceed 90%.

(b) Authorizes the Secretary to waive Medicaid requirements to the extent necessary to implement the demonstration projects. The Secretary may not waive either the freedom-of-choice provision or the provision specifying allowed cost-sharing requirements, except the freedom-of-choice provision may be waived to enable a State to implement a primary care case management system.

Prohibits the Secretary from approving a demonstration project, or accompanying waiver, which reduces the amount, duration, or scope of Medicaid coverage or results in the loss of eligibility for persons otherwise eligible.

Provides that a State request for approval of a demonstration project (and any accompanying waiver) is deemed granted unless the Secretary, within 90 days of submission, either denies the request in writing or informs the State in writing of additional information needed. After receipt of the additional information, the request is deemed granted unless the Secretary denies the request within 90 days.

Provides that the Secretary may not approve demonstration projects that result in aggregate additional Federal expenditures exceeding $50 million in FY88. Amounts appropriated and obligated are available until expended.

Requires the Secretary to report to Congress not later than March 1, 1991, on the demonstration projects and how the results of the demonstration projects may be used to lower infant mortality through improving the access of indigent pregnant women and qualified children to needed physician services.

Senate amendment

(a) Provides that, upon application by the State of New York and approval by the Secretary, the State may conduct a demonstration project to test a Prenatal/Maternity/Newborn Care Pilot Program as an alternative to existing Federal programs. Persons receiving benefits under the program would not receive Medicaid benefits. Federal payments to the State for benefits provided by the program would be in the same amounts as would have been paid for the same benefits under Medicaid, as determined by the Secretary. The Secretary is authorized to waive any Medicaid requirements which would prevent effective operation of the program. The State is required to provide assurance to the Secretary that Medicaid benefits would be made available to pregnant women to the extent such benefits are not provided under the pilot project. The demonstration is to be conducted for a period not to exceed 3 years.

(b) No provision.

Conference agreement

(a) The conference agreement follows the Senate amendment with a modification. The provision specifies the waivers that the Secretary is authorized to grant in connection with the New York Pilot Program, requires a quality assurance program, and requires an evaluation of the demonstration.

Effective date

Enactment.

5. MISCELLANEOUS PROVISIONS RELATING TO SERVICES FOR PREGNANT WOMEN AND CHILDREN

(Section 4105 of the House bill)

Present law

(a) *Period of extended coverage for pregnant women.*—States are required to provide post-partum coverage to eligible pregnant women until the end of the 60-day period beginning on the last day of their pregnancy.

(b) *No application of AFDC deeming methodology.*—In determining eligibility of pregnant women and children under the optional coverage provisions, family income is to be determined in accordance with methodology employed by the State under the Aid to Families with Dependent Children (AFDC) or foster care programs and adoption assistance programs.

Under Section 1902(a)(17)(D) of the Medicaid law, only the income and resources of an applicant's spouse or an applicant's parent with respect to children who are under 21 or blind or disabled are considered (within certain limits) as available to the applicant.

(c) *Maintenance of effort date.*—States electing to cover pregnant women and children under the optional coverage provisions are prohibited from lowering their AFDC standard from that in effect on April 17, 1986.

(d) *No AFDC application required fo optional pregnant women and children.*—State agencies are required to obtain a written application from a Medicaid applicant or his representative. The agency must not require a separate application from an individual receiving AFDC.

House Bill

(a) *Period of extended coverage for pregnant women.*—Specifies that coverage extends through the end of the month in which the 60-day period (beginning on the last day of pregnancy) ends.

(b) *No application of AFDC deeming methodology.*—Specifies that the methodology of these programs is to be used except to the extent it is inconsistent with Section 1902(a)(17)(D) of the Social Security Act.

(c) *Maintenance of effort date.*—Changes the date to July 1, 1987.

(d) *No AFDC application required for optional pregnant women and children.*—Prohibits States from requiring applicants to apply for AFDC as a condition of receiving Medicaid under the optional coverage provisions.

Senate amendment

(a) *Period of extended coverage for pregnant women.*—No provision.

(b) *No application of AFDC deeming methodology.*—No provision.

(c) *Maintenance of effort date.*—No provision.

(d) *No AFDC application required for optional pregnant women and children.*—No provision.

Conference agreement

(a) *Period of extended coverage for pregnant women.*—The conference agreement follows the House amendment with a clarification that pregnancy-related services include family planning services.

(b) *No application of AFDC deeming methodology.*—The conference agreement follows the House bill.

(c) *Maintenance of effort date.*—The conference agreement follows the House bill.

(d) *No AFDC application required for optional pregnant women and children.*—The conference agreement follows the House bill.

Effective date

Items (a) and (b) effective as if they had been included in the enactment of Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272). Item (c) applies to elections made after enactment. Item (d) applies as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509).

6. NURSING HOME REFORMS

(Sections 4111-4117 and 9311-9324 of the House bill, Section 4051 of the Senate amendment).

See discussion of Part 2, sections 4211 through 4218.

7. MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 2-MEMBER COUPLES IN CALIFORNIA

(Section 4121 of House Bill)

Present Law

For purposes of Federal matching, medically needy income levels can be no higher than 133⅓ percent of the State's AFDC cash payment level for a family of the same size without any income or resources. California has based its medically needy income levels for the elderly and disabled on the AFDC payment standard for a family of three.

House Bill

Permits California, for payments made on or after July 1, 1983, to use a specified medically needy income level for families consisting of two adults, at least one of whom is aged, blind, or disabled. This level may not exceed the AFDC payment level for a three person family, consisting of one adult and two children, without any income or resources. The income limitation established for these families may be greater than that applicable for other medically needy families in California.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective Date

The provision is effective upon enactment.

8. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY

(Section 4122 of the House Bill; Section 4101(a) of the Senate Amendment)

Present Law

OBRA (1981) authorized waivers for the provision of home and community-based services (not including room and board) for individuals who would otherwise require care in a skilled nursing facility (SNF) or intermediate care facility (ICF). These are frequently referred to as "2176 waivers" after the comparable section in P.L. 97-35. Services authorized to be provided under a waiver include both those not available under the individual State's Medicaid plan and those not generally available under Medicaid because they are primarily nonmedical in nature.

House Bill

(a) *Statutory Waiver Provision.*—Establishes a new waiver authority, separate from the existing "2176" waiver authority. Under a waiver, Medicaid payments may be made for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that institutionalization would be required in the absence of such services.

(b) *Assurances.*—Specified that a waiver may not be granted unless the State provides assurances, satisfactory to the Secretary, that:

(i) Neccessary safeguards have been taken to protect patient health and welfare and to assure financial accountability for expended funds;

(ii) The State will provide an evaluation of the need for SNF of ICF care for aged persons who are entitled to Medicaid payments for SNF or ICF care, may require such service, or [and?] may be eligible for home and community based services under the waiver;

(iii) The individuals determined likely to require SNF or ICF care are informed of alternatives available, at their choice, under the waiver;

(iv) The State will provide annual information (consistent with a data collection plan of the Secretary) on the impact of the waiver on the program and beneficiaries; and

(v) Medicaid expenditures for SNF, ICF, and home and community based services under the waiver will not exceed the projected amount.

(c) *Waiver of other Medicaid requirements.*—Specifies that an approved waiver may include a waiver of existing State plan requirements relating to state-wideness, comparability, and income and resource rules applicable for persons living in the community. A waiver may provide that the maximum amount of post-eligible income which may be disregarded is equal to such amount disregarded for "2176" waivers.

(d) *Duration of waivers.*—Specifies that the State may terminate a waiver (with at least 60 days advance notice to the Secretary), at the beginning of any calendar quarter. The waiver is for an initial period of three years, and on request of the State, shall be extended for additional 5-year periods unless the Secretary determines the required assurances have not been met in the previous period.

(e) *Waiver services.*—Specifies that covered waivered services may include (to the extent consistent with written plans of care, subject to State approval) case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services requested by the State as the Secretary may approve.

(f) *Payment limits.*—Provides that Medicaid payment may not be made for SNF, ICF, and home and community-based services provided to aged persons in a State during a waiver year (whether or not the waiver is terminated during the waiver year) to the extent such payments exceed a projected amount. The projected amount for a waiver year is the sum of the following amounts as determined by the Secretary:

(i) the aggregate amount of Medicaid payments in the State for SNF and ICF services for the aged for the base year increased by the "nursing facility increase percentage"; and

(ii) the aggregate amount of Medicaid payments in the State for home and community-based services furnished to the aged in the base year increased by the "home care increase percentage". The term "home and community-based" services includes home health care services, services which may be covered under the waiver, and personal care services.

Specifies that the term "base year" means the most recent 4 calendar quarter period (ending before October 1, 1987) for which actual final Medicaid expenditures have been reported to and accepted by the Secretary as of January 31, 1988.

Defines "nursing facility increase percentage" and "home care increase percentage" as the "applicable annual percentage", compounded annually over the period (including fractions of a year before the first waiver year) beginning with the last month of the base year and ending with the last month of the waiver year. Specifies that the "applicable annual percentage" means 9% per year.

For purposes of the nursing facility increase percentage, beginning in FY1990, such percentage is 9% or if greater, the sum of the projected percentage increase in the "facility index" (from the month before the period to the last month of the period) and the projected percentage increase in the elderly population of the State over the period. For purposes of the home care increase percentage, beginning in FY1990, such percentage is 9%, or if greater, the sum

of the percentage increase in the "home and community-based services index" (from the month before the period to the last month of the period) and the projected increase in the elderly population of the State over the period.

(g) *Regulations.*—Requires the Secretary to develop methods of projecting (and issue regulation by July 1, 1989) on:

(i) The percentage increase in nursing facility costs based on a weighted marketbasket index for SNF and ICF services;

(ii) The percentage increase in home care costs based on a weighted marketbasket index for home health and home and community-based services; and

(iii) A State-specific projection for the percentage increase in the number of residents who are 75 years and older.

(h) *Waiver denials and approvals.*—No provisions.

(i) *Transition for existing waivers.*—Provides for temporary extension of an existing "2176" waiver for the elderly. The extension applies for such waivers which are in effect as of December 1, 1987, and which are scheduled to expire before July 1, 1988. The State is required to notify the Secretary, before expiration of its waiver, of its intention to file an application for a waiver under this new provision. The Secretary is required to extend approval of the "2176 waiver," on the same terms and conditions, through July 1, 1988.

Senate Amendment

(a) *Statutory waiver provision.*—Same as House bill.

(b) *Assurances.*—Same as House bill, except does not include item (v).

(c) *Waiver of other Medicaid requirements.*—Same as House bill.

(d) *Duration of waivers.*—Same as House bill, except that a State may terminate a waiver at any time.

(e) *Waiver services.*—Same as House bill, except also specifies that the waiver may limit the individuals provided benefits to those for whom the State determines there is a reasonable expectation that expenditures under the waiver will not exceed those that would be made in the absence of the waiver.

(f) *Payment limits.*—Similar general requirement. Defines the projected amount for a waiver year as the sum:

(i) the aggregate amount of Medicaid payments in the State for SNF and ICF services for the aged for the base year increased by the lesser of 7% or the sum of the following factors: (a) the percentage increase in the appropriate marketbasket index; (b) the percentage increase in the over age 65 population; and (c) 2% for each year beginning after the base year; plus

(ii) the aggregate amount of Medicaid payments in the State for home and community-based services for the aged for the base year increased by the lesser of 7% or the sum of the factors specified above.

Requires States to report expenditures on the basis of the specified age categories in order to be eligible for the waiver.

Specifies that the term "base year" means the most recent year (ending before enactment) for which actual final Medicaid expenditures have been reported to and accepted by the Secretary. "Base

year" means FY1989 in the case of a State that does not report age cohort expenditures for a year ending before enactment.

(g) *Regulations.*—No provisions.

(h) *Waiver denials and approvals.*—Specifies that a determination by the Secretary to deny a waiver (or extension of a waiver) is subject to administrative and judicial review. If the Secretary denies a request for a waiver extension, the waiver shall remain in effect for at least 90 days after denial or (after a State request for review) a final determination.

(i) *Transition for existing waivers.*—Same as House bill.

Conference agreement

(a) *Statutory waiver provision.*—The conference agreement follows the Senate amendment with technical amendments.

(b) *Assurances.*—The conference agreement follows the Senate amendment.

(c) *Waiver of other Medicaid requirements.*—The conference agreement follows the Senate amendment.

(d) *Duration of waivers.*—The conference agreement follows the Senate amendment.

(e) *Waiver services.*—The conference agreement follows the Senate amendment.

(f) Payment limits.—The conference agreement follows the Senate amendment.

(g) *Regulations.*—The conference agreement follows the House bill.

(h) *Waiver denials and approvals.*—The conference agreement follows the Senate amendment.

(i) *Transition for existing waivers.*—The conference agreement follows the Senate amendment.

Effective date

The provision is effective January 1, 1988.

9. PROTECTION OF INCOME AND RESOURCES OF COUPLE FOR MAINTENANCE OF COMMUNITY SPOUSE

(Section 4123 of House Bill)

Present law

(a) *In general.*—Eligibility of the aged and disabled for Medicaid is linked to actual or potential receipt of cash assistance under SSI. The SSI program employs certain criteria for the treatment of income and resources which are also used in states which cover all SSI recipients. (States which do not cover all SSI recipients may employ more restrictive criteria provided they are no more restrictive than those in effect in January 1972.)

An institutionalized individual with a spouse in the community is permitted to keep an amount for the maintenance needs of his spouse; however this amount is set at welfare levels. As a result of Medicaid rules, both for determining eligibility and in the treatment of income after eligibility has been established, the community-based spouse may become impoverished; this is referred to as spousal impoverishment.

(b) *Rules for treatment of income.*—Under SSI rules, if both spouses live together, their incomes and resources are considered available to each other whether or not actually contributed to each other. Spouses are no longer considered to be living together if one is institutionalized in a Medicaid institution longer than one month. Only the income of the institutionalized spouse is considered for purposes of determining eligibility. The "name on the instrument" rule applies in attributing income: i.e., income is considered to belong to the spouse whose name is on the instrument conveying the funds. (In the case of Social Security checks, the amount attributable to each spouse is the individual's share of the couple's benefit.)

(c) *Rules for Treatment of Resources.*—Resources must be considered mutually available for six months following institutionalization if both spouses are SSI eligible and for one month if only one spouse is SSI eligible. Countable resources above specified amounts must be applied to the costs of care. If resources are held solely by the institutionalized spouse, they are attributed to him for eligibility purposes. If they are held jointly by the institutionalized spouse, they are considered to belong entirely to the institutionalized spouse. If they are held solely by the spouse remaining in the community, none is considered available to the institutionalized spouse.

(d) *Protecting income of community spouse.*—After an institutionalized person has established eligibility, his income, after deduction of specified amounts known as "disregards," is applied to the cost of care. The disregards are applied to the patient's income in the following order:

(i) A monthly personal needs allowance (which must be at least $25);

(ii) A monthly maintenance needs allowance for an individual with a spouse at home which may not exceed: the SSI standard for an individual residing in his own home, the highest income standard for State optional supplementary payments, or the medically needy standard for one person. (A State not covering all SSI recipients cannot use a level higher than the more restrictive income standard or the medically needy standard);

(iii) An additional allowance for an individual with a family at home; and

(iv) Amounts for medical expenses not subject to payments by a third party.

(e) *Notice and hearing.*—No provision.

(f) *Court ordered support.*—In certain instances costs have issued orders against institutionalized spouses requiring them to make monthly payments to the community spouse. However, notwithstanding the order, the Health Care Financing Administration (HCFA) has determined that the income of the institutionalized spouse is available to him for purposes of determining his contribution to the cost of care.

(g) *Transfer of assets.*—The fair market value of any resources (not including the individual's home) disposed of within the preceding 24 months must be taken into account in determining SSI eligibility (to which Medicaid eligibility is linked). States are permitted, but not required, to impose such a restriction for Medicaid provid-

ed it is not more restrictive than that for SSI, with one exception. In cases where the uncompensated value of disposed resources exceeds $12,000, the State may provide for a period of ineligibility exceeding 24 months, provided the period bears a reasonable relationship to the uncompensated value. States may waive the delay in Medicaid eligibility in cases of undue hardship.

States are also allowed to deny Medicaid eligibility for 24 months to institutionalized persons who, within 24 months prior to application for Medicaid, disposed of their homes for less than fair market value even though such disposal would not make them ineligible for the SSI program. The provision does not apply if the individual intended to dispose of the home at fair market value or if title was transferred to a spouse or minor or handicapped child.

(h) *Conforming amendment.*—(i) Some States covering the medically needy use less restrictive income or resources methodologies than are applied under the SSI program. HCFA interpreted the law to require that States use SSI income and resource methodologies; however, pursuant to the Medicare Patient and Program Protection Act of 1987 (P.L. 100-93) HCFA can not take any compliance action during a moratorium period.

(ii) Medicaid law contains State plan requirements.

(i) *Study of means of recovering costs of nursing facility services from estates of beneficiaries.*—Under certain conditions, States may recover amounts paid on behalf of deceased beneficiaries.

House Bill

(a) In general

(i) Adds a new Section 1922 to the Act entitled "Treatment of Income and Resources For Certain Institutionalized Spouses." The provisions of this section supersede other provisions of Title XIX, to the extent they are inconsistent, for purposes of determining eligibility of an institutionalized spouse. Comparable treatment is not required for other groups of eligibles.

(ii) Specifies that, except as specifically provided, the section does not apply to the determination of what constitutes income or resources or the methodology and standards for determining and evaluating them.

(iii) Specifies that new Section 1922 applies to a State operating under a Section 1115 waiver (i.e. Arizona which is operating under an alternative demonstration program) but not to the commonwealths and territories.

(b) Rules for treatment of income

(i) Specifies that in any month in which a spouse is institutionalized, no income of the community spouse is considered available to the institutionalized spouse.

(ii) Specifies that, regardless of State laws relating to community property or division of marital property, the following income attribution rules apply (after the institutionalized spouse is determined eligible for Medicaid) for non-trust property unless otherwise specifically provided on the instrument. Income paid solely to one spouse or another is considered to belong to that respective spouse. If the income is paid in both names, half is considered available to

each spouse. If the income is paid in the name of either or both spouses and another person, the income is considered available to each spouse in proportion to the spouse's interest; if payment is made to both spouses, and no interest is specified, one-half is considered available to each spouse. The same principles apply for trust property unless the trust specifically provides otherwise (in which case the income is considered available to each spouse as provided in the trust). For non-trust property with no instrument, half of the income is considered available to each spouse.

(iii) An institutionalized spouse can rebut the non-trust property attribution rules by establishing that ownership interests are otherwise.

(c) Rules for treatment of resources

(i) Provides for the computation, as of the beginning of a period of continuous period of institutionalization, of total joint resources [and of the spousal share?]. All household good and personal effects are to be excluded from the calculation. The spousal share equals half of the total value.

Requires the State to provide an assessment and documentation of total joint resources at the request of either spouse, at the beginning of a continuous period of institutionalization. The assessment shall occur promptly on receipt of relevant documentation. A copy is to be provided to each spouse. A State may charge a reasonable fee for an assessment if it is not part of an application for Medicaid.

(ii) Provides that the determination of countable resources (at the time of application of benefits) is to be made regardless of state laws relating to community property or division of marital property. All resources held by either spouse are considered available to the institutionalized spouse, except that resources held in the name of the community spouse are not considered available unless they exceed the community spouse resource allowance (as of the application date.) [or, if greater, the amount retained under court order?]

(iii) No provision.

(iv) Provides that after an institutionalized spouse has established eligibility, no resources of the community spouse shall be considered available to institutionalized spouse.

(v) Specifies that if the spousal share is less than $12,000 (indexed to the CPI beginning in 1989), or a greater amount (up to $48,000) specified by the state, the institutionalized spouse is allowed to transfer a sufficient amount to enable the community spouse to hold the $12,000, or the amount specified by the State, in his or her own name. If the spousal share is greater than $48,000 (indexed by the CPI beginning for 1989), the amounts in excess of $48,000 would be attributed to the institutionalized spouse. A higher amount may be established pursuant to a fair hearing or court order.

(d) Protecting income for community spouse

Specifies that the following disregards are to be applied to the patient's income in the following order:

(i) A monthly personal needs allowance as specified under this bill ($35);

(ii) A community spouse monthly income allowance. The allowance is the amount needed to bring the community spouse's monthly income up to a minimum level [not to exceed $1,5000 (indexed to the CPI beginning for 1989), or a greater amount specified by the State] which is the sum of:

(a) 150% of the Federal poverty guidelines for a family of two;

(b) an excess shelter allowance (the amount by which mortgage expenses or rent, plus utility costs, exceed 30% of item "a"); and

(c) one-half of the amount by which the income of the institutionalized spouse exceeds the sum of items "a" and "b";

(iii) A family allowance for each family member (minor or dependent child, dependent parent or dependent sibling residing with the community spouse) equal to at least one-third of the amount by which 150% of the Federal poverty line for a family of two exceeds the family income of that family member; and

(iv) Amounts for incurred medical expenses not subject to payment by a legally liable third party.

(e) *Notice and hearing*

Requires specific notification to both spouses at the time of eligibility determination or to either spouse upon request. The State is required to provide notice with respect to: the community spouse monthly income allowance, the family allowance, the method for computing the amount of the community spouse resources allowance, and of the spouse's right to a fair hearing with respect to ownership and availability of income and resources and the determination of the community spouse monthly income allowance. If either spouse establishes that the minimum monthly maintenance needs allowance or the community spouse resource allowance (with respect to income generated) is inadequate to support the community spouse without financial duress, the amount is to increased.

(f) *Court ordered support*

(i) Provides that if a court has entered an order against an institutionalized spouse for monthly income support for the community spouse, the community spouse monthly income allowance must be at least as great as the court ordered amount.

(ii) Provides that if a court has entered a support order against an institutionalized spouse requiring the spouse to transfer countable resources to the community spouse, such transfer will not be considered in violation of transfer of assets prohibitions.

(g) *Transfer of assets*

Requires States to determine, at the time of application, whether an institutionalized individual has disposed, within the preceding 24 months, of resources for less than fair market value. If such a transfer has occurred, a period of ineligibility is established. The number of months in such a period equals the total uncompensated

value at the time of transfer divided be the average cost of nursing home care to a private patient in the State or community. The transfer prohibition does not apply if:

(i) the transfer was that of the applicant's home to his or her spouse, child under 21, or blind or disabled adult child;

(ii) resources were transferred to the community spouse or the individual's blind and disabled child;

(iii) a satisfactory showing is made either that:

(a) the individual intended to dispose of resources at fair market value or for other valuable consideration; or

(b) the resources were transferred exclusively for a purpose other than to qualify for Medicaid; or

(iv) The State determines that denial of eligibility would work an undue hardship.

States can only employ transfer of resources restrictions in accordance with these provisions.

(h) *Conforming amendment*

(i)Provides that a State's methodology for determining eligibility for the medically needy may not be more restrictive than that under the appropriate cash assistance program. The methodology is considered to be no more restrictive if, in using the methodology, additional individuals may be eligible and no otherwise eligible individuals are made ineligible.

(ii) Requires State plans to meet requirements pertaining to protection of community spouse and transfer of assets.

(i) *Study of means of recovering costs of nursing facility services from estates of beneficiaries*

Requires the Secretary to study the means for recovering amounts from the estates of deceased beneficiaries (or the estates of spouses of deceased beneficiaries) to pay for SNF or ICF services furnished them under Medicaid. The Secretary is required to report to Congress, not later than December 31, 1988, on such means, and include appropriate recommendations for change.

Senate Amendment

No provision.

Conference agreement

The conference agreement contains no provisions with respect to items (a) through (h).

(j) *Study of means of recovering costs of nursing facility services from estates of beneficiaries*

The conference agreement follows the House bill.

Effective date

Section (i) is effective upon enactment.

10. MEDICAID ELIGIBILITY OF WORKING WELFARE FAMILIES (4131 OF HOUSE BILL)

Present law

Medicaid coverage must be extended for four months to certain families whose cash assistance has been terminated. This extension applies to families who received AFDC for at least three of the preceding six months and who lost coverage due to increased income from or hours of employment.

States also must extend coverage for nine months to families losing AFDC because they no longer qualify for the four-monthly earned income. States have the option of extending this coverage for an additional six months to families who would be eligible for AFDC if the disregard were applied.

House bill

(a) Initial Six Month Extension

Requires States to extend Medicaid coverage for six months to families who received AFDC for at least three of the preceding six months and who lose coverage due to increased hours of or income from employment of the caretaker relative (as defined under the AFDC program).

Requires States to include with the AFDC termination notice a notice of the continuing availability of Medicaid and a description of the circumstances under which the extension may be terminated. The State is to include a card or other evidence of the family's continuing entitlement.

Provides that the extension shall terminate (after notice of the grounds for termination) after the first month in which the family ceases to include a dependent child. The State may not terminate assistance until it has determined the child could not be covered as a "Ribicoff child" or as a disabled person aged 18 or older.

Specifies that benefits available under the extension provision are the same as those which would be provided if the family were receiving AFDC.

At its option, a State may pay a family's expenses for premiums, deductibles, coinsurance, or similar costs for health insurance or other health coverage offered by an employer of the caretaker relative or the absent Parent of a dependent child (i.e., provide "wrap around coverage"). A State may require a caretaker relative, as a condition of coverage extension, to make application for such coverage but only if: (A) the caretaker relative is not required to make financial contributions for such coverage; and (B) the State provides directly, or otherwise, for payment for any premium, deductible, coinsurance, or similar expenses which the employee is otherwise required to pay. The State is to treat the coverage offered under the employer plan as third party liability (i.e. the State is required to make effort to recover any necessary payments). Payments for employer coverage are treated as Medicaid payments for purposes of Federal matching.

11. MEDICAID EXTENSION DUE TO COLLECTION OF CHILD OR SPOUSAL SUPPORT

(Section 4132 of House Bill)

Present Law

Medicaid coverage must be extended for four months to certain families who, between August 16, 1984 and September 30, 1988, lose AFDC because of receiving child or spousal support payments. This extension applies to families who were receiving AFDC for at least three of the preceding six months.

House bill

Requires States to provide Medicaid coverage, for an additional six months, to each dependent child and each relative with whom the child is living (including the relative's spouse) who become ineligible for AFDC because of collection of child support payments. Mandatory coverage is extended for those who received AFDC in at least three of the preceding six months.

Specifies that nothing in Section 417(a)(1) relating to case management services for families headed by a minor) shall be construed as requiring Medicaid case management services.

Specifies that an individual who would be receiving aid except for Section 417(b)(1)(A) (relating to living requirements for minor parents) is deemed to be receiving aid for Medicaid purposes.

Senate amendment

No provision.

Conference agreement

The Conference agreement does not include the House provision.

12. MEDICAID PAYMENTS TO THE COMMONWEALTHS AND TERRITORIES

(Section 4141 of the House Bill; Section 4053 of the Senate Amendment)

Present Law

(a) Total Federal matching payments for Medicaid expenditures in a fiscal year are limited to:

Puerto Rico—$63,400,000.
Virgin Islands—2,100,000.
Guam—2,000,000.
Northern Marianas—550,000.
American Samoa—1,150,000.

(b) For the Medicaid program in American Samoa, the Secretary may waive all Medicaid requirements except the limit on total expenditures, the Federal matching percentage, and provisions relating to the basic types of services a Medicaid program may cover.

House bill

Increases the limits to:

Puerto Rico:
FY 1988—$79,000,000.

FY 1989—83,700,000.
FY 1990—88,600,000.
Virgin Islands:
FY 1988—$2,600,000.
FY 1989—2,750,000.
FY 1990—2,920,000.
Guam:
FY 1988—$2,500,000.
FY 1989—2,650,000.
FY 1990—2,800,000.
Northern Marianas:
FY 1988—$750,000.
FY 1989—790,000.
FY 1990—840,000.
American Samoa:
FY 1988—$1,450,000.
FY 1989—1,540,000.
FY 1990—1,630,000.

The limits for FY 1990 remain in effect for each succeeding year.

Senate amendment

(a) No provision.
(b) Provides for a similar waiver authority for the Medicaid program in the Northern Mariana Islands.

Conference agreement

(a) The Conference agreement follows the House bill with an amendment raising the caps for the Commonwealths and Territories by a total of: $10.9 million in FY 1988, $14 million in FY 1989, and $17.1 million in FY 1990.
(b) The Conference agreement follows the Senate amendment.

Effective date

Provision (a) is effective commencing with payments made for fiscal year 1988. Provision (b) is effective upon enactment.

13. CLARIFICATION OF COVERAGE OF CLINIC SERVICES FURNISHED TO HOMELESS OUTSIDE FACILITY

(Section 4142 of House Bill; Section 4104 of Senate Amendment)

Present Law

Clinic services are among the optional benefits which States may elect to include among covered Medicaid services. HCFA has interpreted the law to limit payments for clinic services to those delivered in the clinic itself.

House bill

Provides that States may cover as clinic services those services furnished outside the clinic by clinic personnel to beneficiaries without a permanent residence fixed home, or mailing address.

(b) Mandatory 18-Month Extension

(i) Requires States to offer each family, receiving Medicaid for the entire six month initial extension period, the option of extending coverage for the succeeding 18 months.

(ii) *Notice.*—Requires each State during the third and sixth month of the initial extension period to notify the family of the option for a subsequent extension. The notice is to include a statement as to whether premiums are required, and a description of out-of-pocket expenses, benefits, reporting procedures, and coverage limitations under alternative coverage options. If the State requires a premium for extended assistance, it may require that the family report (not later than the 21st day of the 4th month of the initial extension period) gross monthly earnings, minus child day care costs, for the preceding three months. The reporting requirement only applies if it is described in the beneficiary notice. The notice in the 6th month must describe the premium amount applicable during the first three months of extended assistance.

(iii) *Termination.*—Provides that the extended assistance period shall terminate as follows:

(A) At the close of the first month in which the family ceases to include a child who would meet the definition of dependent child under AFDC.

(B) By the end of a month during which the family failed, by the 21st day, to pay the requisite premium for the preceding month (except where good cause has been established).

(C) by the close of the 1st, 4th, 7th, 10th, 13th, or 16th month of the extension period if:

(1) the family fails to report (not later than the 21st day of the month) gross monthly earnings, minus child day care costs, for the preceding three months (except where good cause established). The reporting requirement only applies if the family is so notified in the preceding month;

(2) the caretaker relative had no earnings in one more of the preceding three months (except where good cause established);

(3) the State determines that the family's average gross monthly earnings, minus child day care costs, for the preceding three months exceeds 185% of the Federal poverty line for the same size family.

Provides that instead of termination under (i) above, a State may provide for suspension of the extension until the month after the month the required reporting is made. Gross income information is subject to restrictions on use and disclosure as provided under AFDC. A redetermination of whether a family exceeds the gross income limit is required each time the family submits an earnings report.

Specifies that no termination can be made without a prior notice. Where the termination is based on no earnings by a caretaker relative, the notice must contain information on how the family can reestablish Medicaid eligibility.

Specifies that the State cannot terminate assistance for a child (based on a failure to report earnings) until it has determined that

the person is not eligible for medically needy coverage. [see page 401; prob. ok as is]

(iv) *Coverage.*—Requires each State to offer a family, which is eligible for extension coverage, either the same coverage offered to families on AFDC (with certain exceptions) or alternative coverage. A State may choose not to offer coverage for the following services: SNF, care furnishes by licensed practitioners within the scope of their practice under State law, home health, private duty nursing, physical therapy, other diagnostic and screening services for individuals over 65 in mental institutions, ICF, inpatient psychiatric services for persons under 21, hospice, respiratory care, and any other medical or remedial care recognized under State law.

Provides that a State may elect to pay a family's expenses for premiums, deductibles, coinsurance, or similar costs for health insurance or other health coverage offered by an employer of the caretaker relative or the absent parent of a dependent child subject to the same conditions as are applicable for such coverage under the initial extension period.

(v) *Alternative Coverage.*—Provides that the State may offer alternative coverage to caretaker and dependent childern by enrolling them in: (A) a family option of a group employer plan; (B) a family option of a group health plan or plans offered by a State to its employees; (C) a basic State health plan offered by the State to its uninsured population; or (D) an HMO (as defined under Medicaid), of which less than 50% of its membership is Medicaid eligible. This HMO option is not in lieu of the general HMO option under Medicaid. States may not provide "wrap around" coverage to individuals who enroll in a group employer plan.

Requires States to pay requisite premiums and other enrollment costs for any family it has elected to offer alternative assistance. Premium payments (excluding any amounts otherwise payable by an employer or amounts collected from beneficiaries) are considered as Medicaid payments for purposes of Federal matching.

Provides that if a State offers alternative coverage to families, it must offer them the option of enrolling or disenrolling during a one month period each year without cause. It must offer the option of disenrollment for cause at any time in the case of State uninsured plans or HMOs.

Prohibits, under alternative coverage options, cost-sharing for services related to pregnancy and ambulatory pediatric care (for children under age 8, born after September 30, 1983, as amended by item 1 above).

(vi) *Premiums.*—Permits States to impose premiums for extended coverage. The premium may vary by family size. The premium level may vary for each alternative option offered. In no case may the premium amount in a month exceed 10% of the amount by which the family's gross monthly earnings (excluding child day care costs) during the premium base period exceeds the minimum wage. The premium base period is defined as the 3-month period ending four months before the beginning of the premium payment period (which begins every 3 months).

(c) *Applicability.*—Specifies that the requirements for the extension periods applies to a State operating under a Section 1115 waiver but not to the commonwealths and territories.

(d) *Fraud.*—Provides that the section does not apply to persons losing cash assistance if the termination was due to fraud or imposition of a sanction.

(e) *Waiver.*—Authorizes the Secretary to waive compliance with Section 1902(a)(1) (relating to statewideness), 1916 (relating to cost-sharing requirements for nursing facilities) to the extent necessary for Washington State to carry out the demonstration project relating to the Family Independence Program (as added by an amendment reported by the Committee on Ways and Means to H.R. 1720).

Senate amendment

(a) *Initial Six Month Extension.*—No provision.

(b) *Mandatory 18-Month Extension.*—No provision.

(c) *Applicability.*—No provision.

(d) *Fraud.*—No provision.

(e) *Waiver.*—Section 4115 requires the Secretary to waive compliance with the compliance with the requirements of Sections 1902(a)(1), 1902(e)(1), and 1916 to the extent necessary to enable Washington State to carry out the Family Independence Program as enacted in May 1987 and approved under Section 4115.

Conference agreement

The conference agreement does not include the House provision with respect to items (a) through (c).

Waiver.—The conference agreement follows the House provision with a modification requiring the Secretary to grant the specified waivers if the Secretary approves the basic program.

Effective Date

Enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective date

The provision applies to services furnished on or after January 1, 1988.

14. PHYSICIANS' SERVICES FURNISHED BY DENTISTS

(Section 4143 of House Bill; Section 4104 of the Senate Amendment)

Present Law

Physicians' services are among the mandatory services which State Medicaid programs must provide to categorically needy beneficiaries. For Medicaid purposes physicians' services do not include services furnished by a doctor of dental surgery or dental medicine. Coverage of dentists' services is optional.

House bill

Mandates Medicaid payments for services provided by a dentist or dental surgeon when the services are of a kind which, under State law, either a physician or a dentist may perform and which, if performed by a physician, would be covered as a physician service.

Senate amendment

Same as House bill.

Conference agreement

The Conference agreement follows the House bill.

Effective date

The provision is effective with regard to payments for quarters beginning on or after January 1, 1988, regardless of whether implementing regulations have been promulgated by that date. Delay is permitted where State legislation would be required in order to comply with the provision.

15. ADJUSTMENT IN MEDICAID PAYMENT FOR INPATIENT HOSPITAL SERVICES FURNISHED BY DISPROPORTIONATE SHARE HOSPITALS

(Section 4144 of House Bill)

Present Law

COBRA provided that State Medicaid reimbursement methods and standards for hospital services take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs.

House bill

(a) *Implementation of Requirement.*—Provides that a State Medicaid plan shall not be deemed to comply with the COBRA requirement unless the State has submitted to the Secretary, no later than April 1, 1988, a State plan amendment which includes a definition of "disproportionate share hospital" meeting the requirements of (b) and (d), below, and which provides for increases reimbursement for disproportionate share hospitals. Requires the Secretary to review the State plan amendments by June 30, 1988. A State whose amendment is disapproved for noncompliance is required to submit a revised amendment immediately.

(b) *Hospitals Deemed Disproportionate Share.*—Provides that a hospital shall be deemed a disproportionate share hospital if its Medicaid utilization rate exceeds 15 percent or its low-income utilization rate exceeds 25 percent. The Medicaid utilization rate is defined as the percent of a hospital's total inpatient days attributable to Medicaid eligibles. The low-income utilization rate is defined as the sum of two percentages: (1) Medicaid payment and State and local patient care subsidies as a percentage of the hospital's total patient revenues, and (2) inpatient charity care charges (excluding contractual allowances or discounts other than those for indigent patients ineligible for Medicaid) as a percentage of the hospital's total inpatient charges.

(c) *Payment Adjustment.*—Requires a State's Medicaid payment adjustment for a disproportionate share hospital to take the form of either: (1) a percentage adjustment in Medicaid payment for operating costs comparable to the adjustment which would be made under the Medicare rules for disproportionate share hospitals, or (2) a minimum specified additional payment or percentage, along with an increase in that payment or percentage proportional to the percentage by which the hospital's Medicaid utilization rate exceeds 15 percent.

(d) *Requirement to Qualify as Disproportionate Share Hospitals.*—Provides that a hospital may be deemed a disproportionate share hospital for Medicaid purposes only if the hospital has at least 2 obstetricians with staff privileges who have agreed to furnish obstetrical services to Medicaid beneficiaries. The requirement does not apply to childrens hospitals, or to a rural hospital which does not offer nonemergency obstetrical services to the general population as of the date of enactment. In the case of a rural hospital, an obstetrician is defined as including any physician with staff privileges who performs nonemergency obstetrical services at the hospital.

Senate amendment

No provision.

Conference agreement

(a) The Conference agreement follows the House bill with an amendment barring the granting of a Section 1915(b)(4) waiver.

(b) The Conference agreement follows the House bill with an amendment which deletes the 15% Medicaid utilization rate test and substitutes a test of one standard deviation above the Statewide mean.

(c) The Conference agreement follows the House bill with amendments (1) requiring substantial progress each year to full compliance by fiscal year 1990 and (2) exempting New York State pooling arrangments.

(d) The Conference agreement follows the house bill with an amendment exempting urban as well as rural hospitals that do not offer nonemergency obstetrical services.

Effective date

Provisions (a) through (d) are effective upon enactment.

16. TREATMENT OF GARDEN STATE HEALTH PLAN

(Section 4145 House Bill; Section 4102 of Senate Amendment)

Present law

States may enter into comprehensive Medicaid prepaid risk contracts with Federally qualified HMOs and a variety of other independent entities. Beneficiaries enrolling in a Federally qualified HMO or certain organizations receiving Federal grant funds may be required to remain enrolled for a period of up to 6 months; the State may agree to continue payments to the HMO on behalf of an enrollee for up to 6 months even if the enrollee loses Medicaid eli-

gibility (these provisions are known as "lock-in" and "minimum enrollment period," respectively).

House bill

Provides that an undertaking by the New Jersey Medicaid agency may be considered as "having entered into a prepaid risk contract" with the agency, if the program established by the undertaking complies with the requirements for such contracts and is operated by a separate entity (which may be a subdivision of the agency), and if there is separate accounting for program funds. Provides that the undertaking shall be eligible for the lock-in and minimum enrollment period provisions.

Senate amendment

Same as House bill, except imposes four additional requirements on the program:

(i) The methodology for establishing capitation rates must ensure to the Secretary's satisfaction that total Federal matching payments will be less than would have been spent for the same services delivered on a fee-for-service basis to an actuarially equivalent population.

(ii) The State must provide for review of the entity by a PRO or other organization contracting with the Secretary for review of HMOs or CMPs under the Medicare program.

(iii) The undertaking is subject to the same approval and annual reapproval by the Secretary as a Medicaid HMO contract would be.

(iv) The undertaking is not eligible for a freedom-of-choice or other waiver under section 1915(b) or under section 1115. Provides that the undertaking shall be eligible for the lock-in and minimum enrollment provisions only if at least 25 percent of its members are not Medicaid or part B Medicare beneficiaries and only if any members for whom capitation payments are made by any government entity were offered alternative coverage of costs that would have been paid by any government entity at the time such members were enrolled.

Conference agreement

The Conference agreement follows the Senate amendment.

Effective date

The provision is effective upon enactment.

17. FURTHER CLARIFICATION OF FLEXIBILITY FOR STATE MEDICAID PAYMENT SYSTEMS FOR INPATIENT SERVICES

(Section 4146 of House bill)

Present law

State Medicaid reimbursement methods for hospital and nursing home services must assure that payments (1) are based on rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities, and (2) are consistant with efficiency, economy, and quality of care. The

Secretary has provided by regulation that, in the aggregate, a State's Medicaid payments for these services may not exceed the estimated aggregate payment which would have been made if the State had followed Medicare reimbursement rules.

House bill

Provides that the Secretary has no authority to require that Medicaid payments to hospitals, skilled nursing facilities, or intermediate care facilities be limited, whether on an aggregate, facility-specific, or other basis, to the estimated amounts which would have been spent under Medicare principles.

Senate amendment

No provision.

Conference agreement

The Conference agreement does not include the House amendment.

18. TECHNICAL AND MISCELLANEOUS AMENDMENTS

(Section 4147 of House bill, Sections 4055, 4101(B) and (D); Section 4103 of the Senate amendment)

Present law

(a) *Section 2176—Waiver Technicals.*—Section 2176 of the Omnibus Budget Reconciliation Act of 1981 (OBRA 81, P.L. 97-35) authorized the Secretary to grant waivers to States for the operation of Medicaid home and community based services programs. The Secretary was authorized to waive a provision of the State Medicaid plan. OBRA additionally authorized waiver of a provision relating to comparability of services to be furnished to different classes of eligibles.

(b) *Increases in Number of Individuals Who May Be Served Under Model Home and Community-Based Service Waivers.*—A separate category of 2176 waivers, known as model waivers, was created by the Health Care Financing Administration (HCFA) to facilitate State efforts to provide community-based services to a limited number of blind and disabled individuals who would otherwise require institutional care and would be eligible for Medicaid if they were in an institution. Coverage under a model waiver is limited to no more than 50 such persons.

(c) *Katie Beckett Technical.*—For Medicaid purposes only, a State may deem eligible for Supplemental Security Income (SSI) or a State supplemental payment a disabled individual who is 18 years of age or younger, who requires the level of care provided in an institution and is receiving equally cost-effective care outside the institution, and who would be eligible for SSI or a State supplement if he or she were in an institution.

(d) *Codification of Voluntary Contribution Rule.*—A State Medicaid plan must provide for State financial participation in the non-Federal share of Medicaid expenditures. The Secretary has provided by regulation that private contributions may be counted towards

the State's share if the donated funds are entirely under the control of the State or a local Medicaid agency.

(e) *Organ Transplant Technical.*—States which choose to cover organ transplant procedures may restrict the facilities or practitioners from whom Medicaid beneficiaries may obtain the services, so long as the restrictions are consistent with accessibility of high quality care, and so long as similarly situated individuals are treated alike. States may restrict the facilities of practitioners from whom Medicaid beneficiaries may obtain the services, so long as the restrictions are consistant with accessibility of high quality care.

(f) *Emergency Care Technical.*—States are required, as a condition of granting Medicaid eligiblity, to obtain the applicant's Social Security number and to verify United States citizenship or satisfactory immigration status. Under the Omnibus Budget Reconciliation Act, states must provide Medicaid coverage to otherwise eligible illegal aliens for treatment of emergency medical conditions.

(g) *Civil Money Penalty and Exclusion Clarification.*—(i) Civil money penalties may be imposed in a number of circumstances in which a person makes a claim for payment which he or she knows "or has reason to know" is not valid.

(ii) The Medicare and Medicaid Patient and Program Protection Act (P.L. 100-93) provides that, when a provider is excluded from participation in the Medicare program for a specified period, the provider is also to be excluded from Medicaid participation for the same period, unless the Secretary grants a waiver of the Medicaid exclusion at the request of a State.

(h) *HMO Technical Amendments.*—A Federally qualified HMO participating in the Medicaid program is subject to the requirement that no more that 75 percent of its enrolled population be Medicare or Medicaid beneficiaries. This requirement may be waived for a Federally qualified HMO which was previously operated as a demonstration project and meets certain other conditions. However, an HMO receiving such a waiver is not eligible to participate in the lock-in and minimum enrollment period provisions (see the discussion of these provisions in item 16, above).

(i) *Incorporation of Certain Provisions Relating to Indian Health Service Facilities.*—Indian Health Services hospitals, intermediate care facilities, and skilled nursing facilities are eligible for Medicaid reimbursement if they meet certain qualifying conditions.

(j) *Frail Elderly Demonstration Project Waivers.*—OBRA required the Secretary to provide waivers of Medicare and Medicaid requirements for certain demonstration projects designed to replicate the ON LOK program, a previously authorized demonstration involving the provision of comprehensive health care to the elderly on a capitated basis. Eligibility for the waivers was restricted to projects which had received grants from the Robert Wood Johnson Foundation.

(k) *Medically Needy Incurred Expenses.*—Medically needy beneficiaries may qualify for Medicaid by incurring medical expenses sufficient to reduce their income and resources to levels established by the State's eligibility standards. Only medical expenses for which the applicant is actually liable may be counted as "incurred" for this purpose.

(l) *Qualifications for Case Managers for Individuals with Development Disabilities and Chronic Mental Illness.*—COBRA added as an optional Medicaid benefit case management services, defined as services to assist Medicaid eligibles in getting access to needed medical, social, and educational services. States may elect to provide case management to a specific population, such as individuals with chronic mental illness.

(m) *Habilitation Services Effective Date.*—State Medicaid programs may obtain waivers to furnish home and community based services to specified populations. COBRA permitted States to furnish "habilitation services," effective April 7, 1986; the definition covered only those services provided to individuals after discharge from an intermediate care or skilled nursing facility. The Secretary has interpreted the provision as allowing coverage of habilitation services only for waiver participants discharged from a facility on or after April 6, 1986.

(n) *Section 2176 Waiver for Institutionalized Developmentally Disabled.*—States applying for home and community based services waivers must provide assurances that average per capital expenditures during a fiscal year for persons participating in the waiver program will not exceed the average per capita Medicaid expenditures which would have been made for the same persons if the waiver had not been granted.

(o) *Renewal of Freedom-of-Choice Waivers.*—States may obtain waivers of the requirement that Medicaid beneficiaries be given free choice of providers in order to operate a primary care case management program or otherwise restrict provider participation. Waivers may be in effect for a maximum of two years; a waiver renewal application is deemed granted unless denied by the Secretary within 90 days after the date it is submitted.

(p) *Repeal of Coordinated Audit Requirement.*—When a Medicaid provider reimbursed on the basis of reasonable cost is also a Medicare provider reimbursed on the same basis, State audits to determine reimbursable costs must be coordinated with Medicare audits.

(q) *Medicaid Quality Review.*—State Medicaid programs entering into comprehensive risk contracts with HMOs or other prepaid providers must provide for an annual review of the quality of services furnished by each contractor. A State may use either a utilization and quality control peer review organization (PRO) which has contracted with the Secretary for Medicare reviews, or a private accreditation body. If the State contracts with a PRO, the Federal matching rate for the contract expenditures is 75 percent, if the State uses a private accreditation body, the matching rate is 50 percent.

(r) *Codification of Technical Error Definition.*—Federal financial participation in State Medicaid expenditures may be reduced to the extent that a State makes erroneous expenditures in excess of allowable error rate. The Secretary has provided by regulation that technical errors in the State's eligibility determination process will not be counted if correction of the errors would not result in a difference in Medicaid expenditures.

(s) *Freedom of Choice.*—States may restrict the freedom of choice of providers by persons enrolled in a primary care case management program, a health maintenance organization, or a similar

entity. COBRA provided that, when enrollment occurred under a waiver program, enrollment could not entail any restriction of the freedom to choose a provider of family planning services.

Persons losing Medicaid eligibility but remaining enrolled in an HMO because of minimum enrollment provisions are entitled only to services furnished by the HMO.

(t) *Miscellaneous Technical Corrections.*—Current law contains a number of technical errors.

House bill

(a) *Section 2176 Waiver Technicals.*—Provides that the Secretary may also waive a requirement that income and resource standards used in determining eliqiblity for non-institutionalized medicalIy needy beneficiaries conform to the stands used for comparable categorically needy groups.

(b) *Increase in Number of Individuals who may be Served under Model Home and Community-Based Services Waivers.*—No provision.

(c) *Katie Beckett Technical.*—Replaces the requirement, that the child would have been eligible for SSI or a State supplement if the child were in an institution, with a requirement that the child would have been eligible for Medicaid if he or she were in an institution.

(d) *Codification of Voluntary Contribution Rule.*—Provides that private donations may be counted to wards the State's share of Medicaid expenditures if they are subject to the unrestricted control of the State.

(e) *Organ Transplant Technical.*—Provides that the special rules governing organ transplant coverage may not be construed as permitting a State to limit coverage in such a way that the services provided are not reasonable in amount, duration, and scope to achieve their purpose.

(f) *Emergency care technical.*—Provides that State need not obtain a Social Security number or verify satisfactory immigration status when providing Medicaid coverage to an alien for treatment of an emergency medical condition.

(g) *Civil money penalty and exclusion clarifications.*—(i) Replaces "has reason to know" with "should know" each time it occurs.

(ii) Provides that a State may exclude a provider from participation in the Medicaid program for a longer period than that for which the provider is excluded from Medicare participation.

(h) *HMO Technical Amendments.*—Provides that Federally qualified HMOs which have received a waiver of the 75 percent Medicare and Medicaid enrollment limit are eligible for the lock-in and minimum enrollment period provisions.

(i) *Incorporation of Certain Provisions Relating to Indian Health Service Facilities.*—Provides that an Indian Health Service facility other than a hospital, intermediate care facility, or skilled nursing facililty is also eligible for Medicaid reimbursement if it provides services of a type covered under the State's Medicaid plan. The Secretary may enter into an agreement with a State for reimbursement of Medicaid payments to an Indian Health Service facility for services provided to Indians.

(j) *Frail Elderly Demonstration Project Waivers.*—Deletes the requirement that projects receiving waivers be funded by the Robert Wood Johnson Foundation, and requires instead that projects be part of an organized initiative to replicate the findings of the On Lok demonstration. Clarifies that projects receiving waivers may assume risk progressively over 3 years.

(k) *Medically Needy Incurred Expenses.*—Provides that medical expenses may be counted as "incurred" for the purpose of establishing Medicaid eligibility even if the costs have been reimbursed under another State or local program.

(l) *Qualifications For Case Managers For Individuals With Development Disabilities and Chronic Mental Illness.*—Provides that, when a State furnishes case management services to individuals with developmental disabilities or chronic mental illness, it may restrict participation to case managers who are capable of ensuring that the individuals receive needed services.

(m) *Habilitation Services Effective Date.*—Provides that habilitation services may be pr6vided to any beneficiary participating in a home and community based services waiver program, regardless of whether her or she was receiving institutional services prior to participation; effective as if included in COBRA.

(n) *Section 2176 Waiver for Institutionalized Developmentally Disabled.*—Provides that, in making the required cost comparison for a waiver program which applies only to individuals with developmental disabilities who are inpatients in a skilled nursing or intermediate care facility (but who require the level of care provided by an intermediate care facility for the mentally retarded), the State may base its estimate of average per capita cost without the waiver on average per capita cost for inpatients of an intermediate care facility for the mentally retarded.

(o) *Renewal of Freedom-of-Choice Waivers.*—Provides that the Secretary may request additional information about a waiver renewal application within 90 days after the date of submission. Once the additional information is received, the application is deemed granted unless the Secretary denies it within 90 days.

(p) *Renewal of Freedom-of-Choice Waivers.*—Repeals the requirement for coordination of Medicare and Medicaid audits.

(q) *Medicaid Quality Review.*—Provides that a State may provide for review of prepaid contractors by an organization which meets the requirements established for PROs, but which has not contracted with the Secretary for Medicare reviews. Provides for a 75 percent matching rate for a contract with such an organization.

(r) *Codification of Technical Error Definition.*—Adds to the law the exception provided by regulation.

(s) *Freedom of Choice.*—Extends to non-waivered enrollment programs the prohibition of any restriction of freedom of choice among family planning providers.

(t) *Miscellaneous Technical Corrections.*—Makes technical corrections to various provisions. In provisions referring to "nonfarm" Federal poverty levels, strikes the word "nonfarm." Provides that a 198— Omnibus Budget Reconciliation Act (OBRA) Medicare amendment, which provided that commissions to a group purchasing agent do not constitute kickbacks, also applies to Medicaid, effective as if included in OBRA.

Senate amendment

(a) *Section 2176 Waiver Technicals.*—Same as House bill.

(b) *Increase in Number of Individuals who may be Served under Model Home and Community-Based Service Waivers.*—Prohibits any waiver for home and community-based services from limiting to less than 200 the number of individuals who may be served.

(c) *Katie Beckett Technical.*—No provision.

(d) *Codification of Voluntary Contribution Rule.*—No provision.

(e) *Organ Transplant Technical.*—No provision.

(f) *Emergency Care Technical.*—No provision.

(g) *Civil Money Penalty and Exclusion Clarifications.*—No provision.

(h) *HMO Technical Amendment.*—No provision.

(i) *Incorporation of Certain Provisions Relating to Indian Health Service Facilities.*—No provision.

(j) *Frail Elderly Demonstration Project Waivers.*—No provision.

(k) *Mentally Needy Incurred Expenses.*—No provision.

(l) *Qualifications for Case Managers for Individuals with Developmental Disabilities and Chronic Mental Illness.*—No provision.

(m) *Habilitation Services Effective Date.*—Provides that the COBRA provision applies with respect to habilitation services furnished on or after enactment of COBRA regardless of the date of an individual's discharge from a skilled nursing or intermediate care facility.

(n) *Section 2176 Waiver for Institutionalized Development Disabled.*—No provision.

(o) *Renewal of Freedom-of-Choice Waivers.*—No provision.

(p) *Repeal of Coordinated Audit Requirement.*—No provision.

(q) *Medicaid Quality Review.*—Provides that the 75 percent matching rate applies to expenditures under a contract with a private accreditation body whether or not it meets the requirements for PROs.

(r) *Codification of Technical Error Definition.*—No provision.

(s) *Freedom of Choice.*—Similar provision. Also provides that Medicaid payment may be made to a provider other than the HMO for family planning services furnished to an enrolled beneficiary who would be ineligible but for the minimum enrollment period.

(t) *Miscellaneous Technical Corrections.*—Makes a technical correction in the numbering of one provision.

Conference agreement

(a) The Conference agreement follows the Senate Amendment.

(b) The Conference agreement follows the Senate Amendment.

(c) The Conference agreement follows the House bill.

(d) The Conference agreement does not include the provision from the House bill

(e) The Conference agreement follows the House bill. The Conferees note that a state may require a reasonable expectation of therapeutic benefit from an organ transplant provided such requirement is applied uniformly.

(f) The Conference agreement does not include the provision in the House bill.

(g) The Conference agreement follows the House bill.

(h) The Conference agreement follows the House bill with an amendment regarding waivers under Section 1915(b) and conforming HMO sanctions.
(i) The Conference agreement follows the House bill.
(j) The Conference agreement follows the House bill.
(k) The Conference agreement follows the House bill.
(l) The Conference agreement follows the House bill.
(m) The Conference agreement follows the Senate Amendment.
(n) The Conference agreement follows the House bill.
(o) The Conference agreement follows the House bill.
(p) The Conference agreement follows the House bill.
(q) The Conference agreement follows the Senate amendment.
(r) The Conference agreement follows the House bill with an amendment providing for expiration on 12/31/88.
(s) The Conference agreement follows the House bill with an amendment concerning the minimum enrollment period.
(t) The Conference agreement follows the House bill.

Effective date

Provision (a) is effective as if it were included in the Omnibus Budget Reconciliation Act of 1986 (OBRA 1986), P.L. 99-509. Provision (b) is effective as if included in the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-248. Provision (c) is effective upon enactment. Provision (e) is effective as if it were included in OBRA 1986. Provision (g) is effective upon enactment. Provision (h) applies to health care services performed on or after enactment. Section (i) is effective as if it were included in OBRA 1986. Provision (j) applies to costs incurred after the date of enrollment. Provisions (k), (l), and (m) are effective as though they were included in the Consolidated Omnibus Budget Reconciliation Act, P.L. 99-272. Provision (n) applies to requests for continuation of waivers received after the date of enactment. Provision (o) applies to audits conducted after the date of enactment. Provisions (p) and (q) are effective upon enactment. Provision (r) is effective such that it applies to services furnished on and after July 1, 1988. Provision (s) is effective upon enactment. Provision (t) is effective as if it were included in OBRA 1986.

19. STUDY AND REPORT ON THE MEDICAL EXPENSES OF FAMILIES OF CHILDREN WITH SPECIAL HEALTH CARE NEEDS

(Section 4052(g) of Senate amendment)

Present Law

No provisions.

House Bill

No provisions.

Senate Amendment

Requires the Office of Technology Assessment to conduct a study and report to Congress by August 1, 1988 on the following:

(i) the number of children age 18 and younger who have high cost medical expenses exceeding $25,000 in a single year and

who have a chronic illness or disability which results in their being developmentally delayed or unable to perform one or more normal activities;

(ii) their aggregate annual medical expenses;

(iii) their medical diagnoses;

(iv) the age of onset of conditions and the expected duration of illness or disabilities;

(v) payment sources;

(vi) status and adequacy of insurance and out-of-pocket liability to family income;

(vii) relation of out-of-pocket liability to family income;

(viii) causes of out-of-pocket liability;

(ix) demographic profiles of families with such children.

Conference agreement

The Conference agreement does not include the Senate provision. However, the Conferees agreed to a joint request to the Office of Technology Assessment for a study on the subject matter contained in the Senate Amendment, eliminating any duplication of subjects already under study.

20. FEDERAL REVIEW OF STATE INSPECTION OF CARE DETERMINATIONS

(Section 4054 of Senate amendment)

Present law

States are required to have an effective program of medical review of the care of Medicaid patients in skilled nursing facilities, intermediate care facilities, and mental hospitals. The reviews are to determine; (1) the adequacy of the services available; (2) the necessity and desirability of continued institutionalization; and (3) the feasibility of meeting health care needs through alternative institutional or noninstitutional services. The state must make a quarterly showing satisfactory to the Secretary that it has in place an effective program of medical review. The Secretary reviews these showings and also conducts onsite surveys to validate the State's quarterly showings. Penalties apply if the State survey fails to review each Medicaid-eligible patient.

House bill

Repeals current requirement for medical review in SNFs and ICFs [See related provisions in Nursing Home Comparison: section 4113 of Energy and Commerce and section 9212 of Ways and Means provisions regarding validation surveys (item 15(g)); and section 4111(f) of Energy and Commerce Committee provisions regarding readmission screening and annual review of mentally ill and mentally retarded residents (item 7 (g) and (h)].

Senate amendment

Provides that the Secretary may, in such cases as he finds appropriate, conduct an independent medical review of the care of patients in mental facilities, skilled nursing facilities, or intermediate care facilities, including an assessment of the appropriateness of the State's determination of level of care requirements, the adequa-

cy of the services provided, and the State's efforts in communicating deficiencies to the facility and assuring corrective action. If the Secretary finds following the conduct of an independent medical review, that the State has failed to perform an effective medical review, Federal financial participation shall not be available for care provided by the facility for patients for whom and during the period for which the review was found to be ineffective. Where the Secretary's review is based on sampling procedures, the findings of the review may be projected to all parties similarly situated in the State.

Requires that a State's program of medical review include provision, found adequate by the Secretary, for the development of a corrective action plan of each facility with deficiencies and a description of the steps that will be taken by the State to assure that the facility acts expeditiously to implement the plan and correct the deficiencies addressed in the plan. Requires that the corrective action plan address both deficiencies in services provided to individual patients and deficiencies of the facility generally.

Provides that failure to review each person's care in a mental hospital, skilled nursing facility, and intermediate care facility would not require the Secretary to find a State's program of medical review unsatisfactory, so long as the number of patients who were not reviewed did not exceed the lesser of 10 patients or 2 percent of all Medicaid patients in the institution (or 1 patient in the case of an institution with 50 or fewer Medicaid patients.)

Conference agreement

The Conference agreement does not contain the provision in the Senate Amendment. See Nursing Home provisions. Follows the House bill.

21. OPTIONAL MEDICAID COVERAGE OF INDIVIDUALS IN CERTAIN STATES RECEIVING ONLY OPTIONAL STATE SUPPLEMENTARY PAYMENTS

(Section 4056 of Senate Amendment)

Present law

State Medicaid programs may cover one or more reasonable categories of persons receiving State supplementary payments (SSP) but not supplemental security income (SSI) payments, provided they would be eligible for SSI except for income. Optional supplementary payments must be available on a statewide basis, though there may be variations in the income standards used by political subdivisions. Regulations require that in computing countable income for State-administered payments, the State must use SSI deductions from income or more liberal deductions.

House bill

No provision.

Senate amendment

Permits States which administer eligibility for their SSP-only recipients to determine countable income based on deductions estab-

lished by the State which are more restrictive than the SSI standards.

Conference agreement

The Conference agreement follows the Senate amendment.

Effective date

The provision is effective upon enactment.

22. MEDICAID WAIVER FOR HOSPICE CARE FOR AIDS PATIENTS

(Section 4106 of Senate Amendment)

Present law

A hospice contracting with Medicare or Medicaid must provide assurances satisfactory to the Secretary that total days of inpatient care provided to beneficiaries will be no more than 20 percent of the total days during which the beneficiaries' election to receieve hospice services is in effect.

House bill

No provision.

Senate Amendment

Provides, for Medicaid services only, that a hospice may be allowed to exclude days of inpatient care provided to individuals with acquired immunodeficiency syndrome from the days counted towards the 20 percent inpatient day limit. The Secretary is required to establish procedures for making this allowance.

Conference agreement

The Conference agreement follows the Senate Amendment.

Effective date

The provision is effective upon enactment.

23. DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID

(Section 4107 of Senate Amendment)

Present law

Both AFDC and Medicaid have ongoing quality control programs which are intended to reduce erroneous benefit payments below certain target levels. States whose error rates fall above target percentages are subject to fiscal sanctions. COBRA provided for studies of quality control programs. AFDC fiscal sanctions were suspended for the 24 month period beginning July 1, 1986.

House bill

No provision

Senate Amendment

Prohibits the Secretary from imposing quality control sanctions for prior Medicaid July 1, 1988.

Conference agreement

The Conference agreement follows the Senate Amendment.

Effective date

The provision is effective upon enactment.

24. TECHNICAL AMENDMENTS RELATING TO NEW JERSEY RESPITE CARE PILOT PROJECT

(Section 4108 of Senate amendment)

Present law

Medicaid does not currently cover respite care services except where provided under a home and community-based waiver approved by the Secretary under Section 1915(c). However, Section 9414 of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509, OBRA) established a respite care pilot project under the Medicaid program in New Jersey. HCFA has interpreted Section 9414 to require a formal Waiver. To implement the pilot project, certain technical corrections to OBRA are considered necessary.

House bill

No provision.

Senate amendment

(a) *Conditions of agreement.*—Amends Section 9414(b) of OBRA by adding language providing that the State may submit a detailed proposal describing the project (instead of a formal waiver request) and that the State is required to use a post-eligibility cost-sharing formula based on the available income of participants with income in excess of the nonfarm income official poverty line (as defined by the Office of Management and Budget and revised annually.)

(b) *Definitions.*—Amends Section 9414(a) of OBRA to redefine eligible individuals for the pilot project as those elderly and disable persons: (1) whose income does not exceed 300% of the SSI standard (or, in the case of a couple dependent on a caregiver, whose combined incomes do not exceed this amount); and (2) who, at State option meet a State-established resource standard. Also provides a definition of "respite care services."

(c) *Provisions subject to waiver.*—Allows the Secretary to require the current low requirements relating to single standard for income and resource eligibility.

Conference agreement

(a) *Conditions of agreement.*—The Conference Agreement follows the Senate Amendment.

(b) *Definitions.*—The Conference Agreement follows the Senate Amendment with an amendment establishing a self-declaratory resource limit of $40,000.

(c) *Provisions Subject Waiver.*

Effective date

Provisions (a) through (c) are effective upon enactment.

25. CONTINUES ELIGIBILITY AND RESTRICTION ON DISENROLLMENT WITHOUT CAUSE FOR METROPOLITAN HEALTH PLAN HMO

(Section 4109 of the Senate amendment)

Present law

For Federally qualified HMOs and specified other organizations with prepaid contracts, a State may: (a) Continue payments to the organization for up to 6 months after the date of enrollment on behalf of a beneficiary who loses eligibility for Medicaid benefits; and (b) restrict a beneficiary's right to disenroll from the organization without cause for up to 6 months.

House bill

No provision.

Senate amendment

Provides that, for the purposes of the payment continuation and disenrollment restrictions, Metropolitan Health Plan, operated by the New York City public hospitals, shall be treated in the same manner as a Federally qualified HMO.

Conference agreement

The Conference agreement follows the Senate Amendment with an amendment regarding the authority to grant waivers under Section 1915(b) and conforming HMO sanctions.

Effective date

The provision is effective upon enactment.

26. RURAL IMPACT REGULATORY ANALYSIS

(Section 4001(c) of Senate amendment)

Present law

There is currently no requirement that the Secretary include, in a proposed final rule, an analysis of the regulation's impact on rural areas:

House bill

No provision. See Item 7(j), Part A for summary of Medicare provision.

Senate amendment

Requires the Secretary—whenever he or she publishes a general notice of proposed rulemaking for any rule or regulation proposed under Medicare, Medicaid, or the peer review organization program, that may have a significant impact on a substantial number of small rural hospitals—to prepare and make available for public comment an initial regulatory impact analysis.

Requires that analysis to describe the impact of the proposed rule or regulation on such hospitals and requires that, with respect to small rural hospitals, the matters required under Section 603 of

Title V, United States Code, be set forth with respect to small entities.

Requires the initial regulatory impact analysis (or a summary) to be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

Requires the Secretary—whenever he or she promulgates a final version of a rule or regulation for which an initial regulatory impact analysis is required by the above—to prepare a final regulatory impact analysis with respect to the final version of the rule or regulation.

Requires that analysis to describe the impact of the proposed rule or regulation on such hospitals and requires that with respect to rural hospitals the matters required under Section 603 of Title V, United States Code, be set forth with respect to small entities.

Requires the Secretary to to make copies of the final regulatory impact analysis available to the public and to publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

Requires that if a regulatory flexibility analysis is required by Chapter 6 of Title V, United States Code, for a rule or regulation to which this subsection applies, then such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.

Conference agreement

The Conference agreement follows the Senate Amendment with an amendment limiting the application of the provision to regulations directly affecting operations of small rural hospitals.

Effective date

The provision applies to regulations proposed more than 30 days after the date of enactment of this Act.

27. COLLECTION OF PAST DUE AMOUNTS OWED BY PHYSICIANS WHO BREACHED CONTRACTS UNDER THE NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM

(Section 4021(i) of Senate Amendment)

Present law

The National Health Service Corps provides scholarship funds for health professions training in exchange for a promise to serve in a health manpower shortage area for a specified period of time (one year of service for each year of scholarship assistance received). If the physician breaches this agreement, the scholarship, plus a penalty, must be repaid.

House bill

No provision.

Senate amendment

(a) *Agreements.*—(i) Adds a new Section 1891 to the Social Security Act entitled: "Offset of Payments to Physicians to Collect Past-

Due Obligations Arising From Breach of Scholarship Obligations." The Section requires the Secretary to enter into an agreement with any physician who, by reason, of a breach of contract with the National Health Service Corps Scholarship Program, owes a past due obligation to the United States.

(ii) Requires the agreement to provide that:

(A) Deductions are to be made from amounts otherwise payable to the physician under Medicare and Medicaid, in accordance with a schedule agreed to by the Secretary and the physician, until the past-due obligation (and accrued interest) have been repaid;

(B) Payment under Medicare to these physicians can only be made on an assignment related basis; and

(C) If the physician does not provide a sufficient quantity of Medicare and Medicaid services to maintain the collection according to the agreement formula and schedule, or if the physician refuses to enter into an agreement or breaches any provision of the agreement, the Secretary must immediately inform the Attorney General. The Attorney General is required to immediately commence an action to recover the full amount of the past due obligation. The Secretary is required to bar the physician from Medicare and Medicaid until the entire past-due obligation has been repaid.

(D) Prohibits the Secretary from barring a physician from Medicare and Medicaid if the physician is a sole community physician or sole source of essential specialized services in the community.

(b) *Past Due Obligation.*—Specifies that a past-due obligation is any amount: (1) owed by a physician to the United States by reason of a breach of a National Health Service Corps scholarship contract, and (2) which has not been paid by the deadline established by the Secretary and has not been cancelled, waived, or suspended by the Secretary.

(c) *Collection Not Exclusive.*—Specifies that the new Section 1891 does not preclude the United States from applying other provisions of law otherwise applicable to obligations owed to the United States.

(d) *Collection From Providers and Health Maintenance Organizations.*—(i) Requires the Secretary to deduct past due obligations from payments to a provider, health maintenance organization (HMO) or competitive medical plan (CMP) in the case of a physician who owes a past-due obligation and is an employee of a provider (which has an agreement with Medicare) or of an HMO or CMP (with a contract with Medicare).

(ii) Specifies that the deduction cannot be made until 6 months after the Secretary notifies the provider, HMO or CMP of the amount to be deducted and the physicians to whom the deductions are attributable.

(iii) Specifies that such deduction relieves the physician of the obligation (to the extent of the amount collected) to the United States. The provider, HMO or CMP has a right of action to collect from the physician the deducted amount (including accumulated interest).

(iv) Specifies that no deduction shall be made if, within 6 months of the notice, the physician pays the past-due obligation or is no longer an employee of the provider, HMO or CMP.

(v) Requires the Secretary to apply these requirements in the case of a physician who is a member of a group practice if the group practice submits bills as a group.

(e) *Notification to and Agreement With the State Medicaid Agencies.*—Requires the Secretary to notify each Medicaid agency of a physician who owes a past-due obligation. If the physician receives (or is employed by any entity which receives) Medicaid payments, the Secretary is required to enter into an agreement with each State under which the amounts otherwise payable will be deducted as provided under (a) or (d) above. Deductions are to be made only from the Federal share of Medicaid payments. Amounts paid to the State are to be reduced accordingly.

(f) *Transfer From Trust Funds.*—Specifies that deducted amounts are to be transferred from the appropriate trust fund to the general fund of the Treasury and credited as payment of the named physician's past due obligation.

(g) *Medicaid Amendment.*—Requires States to make deductions as specified by the Secretary under (e) above. Deductions are to be made from the Federal share of Medicaid payments credited as payment of the named physician past-due obligation.

(h) *PHS Act Amendment.*—Amends the PHS Act to provide for collection of past-due National Health Service Corps scholarship obligations through Medicare and Medicaid payments.

Conference agreement

The Conference Agreement does not include the portions of the Senate Amendment relating to Medicaid.

28. EXTENSION OF ARIZONA HEALTH CARE DEMONSTRATION PROJECT

(Section 4122 of the Senate amendment)

Present law

The Arizona Health Care Cost Containment System (AHCCCS) receives Federal matching, under the Section 1115 demonstration authority, for care it provides to categorically needy individuals who would be eligible for Medicaid in another State. This demonstration authority expires September 30, 1988.

House bill

No provision.

Senate amendment

Specifies that notwithstanding limitations included in Section 1115 of the Social Secuity Act, the Secretary upon application shall renew until September 30, 1989, approval of the AHCCCS demonstration project including all waivers granted by the Secretary under such Section 1115 as of September 30, 1987. The Secretary's renewed approval is on the same terms and conditions that existed between the applicant and the Secretary on September 30, 1987. The renewed approval remains in effect through September 30,

1989, unless the Secretary finds that the applicant no longer complies with such terms and conditions. Nothing in this provision is to be construed as preventing the applicant from seeking approval, in due course, from the Secretary for additional Section 1115 waivers for coverage of additional optional groups and for coverage for long-term care and other services which were not covered as of September 30, 1987.

Conference agreement

The Conference agreement follows the Senate Amendment with an amendment: providing that the extension is not to be construed as requiring or prohibiting the Secretary from granting further waivers regarding optional coverage groups or long-term care services.

Effective date

The provision is effective upon enactment.

29. CERTIFICATION AND RECERTIFICATION OF THE NEED FOR CERTAIN SERVICES

(Section 4131 of the Senate amendment)

Present law

(a) *Certification and Recertification for Certain Services.*—Payment for skilled nursing facility (SNF) services and intermediate care facility (ICF) services can only be made if a physician, or a physicians assistant or nurse practitioner working under the supervision of a physician, certifies and periodically recertifies that an individual requires services in an SNF or ICF. Such services also must be furnished according to a plan established and periodically reviewed by a physician.

(b) *Coverage of Certain Items and Services Provided by a Nurse Practitioner or Clinical Nurse Specialist.*—No provision.

House bill

(a) *Certification and Recertification for Certain Services.*—No provision.

(b) *Coverage of Certain Items and Services Provided by a Nurse Practitioner or Clinical Nurse Specialist.*—No provision.

Senate amendment

(a) *Certification and Recertification for Certain Services.*—Provides that the certification and recertification of the need for care in an SNF or ICF may be done by a physician, or by a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician. Also provides that the plan for SNF and ICF services must be established and periodically reviewed by a physician, or by a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician.

(b) *Coverage of Certain Items and Services Provided by a Nurse Practitioner or Clinical Nurse Specialist.*—Provides for coverage of services provided in an SNF or ICF by nurse practitioners and clin-

ical nurse specialists working in collaboration with a physician. (See Part III. C Item 28 for definitions of nurse practitioners and clinical nurse specialists.)

Conference agreement

The Conference agreement does not contain the provision from the Senate Amendment. See nursing home provisions.

30. VACCINE COMPENSATION CONFERENCE AGREEMENT ON PROVISIONS WITHIN THE JURISDICTION OF THE COMMITTEES ON ENERGY AND COMMERCE AND SENATE LABOR AND HUMAN RESOURCES

Present law:

A no-fault system was enacted in 1986 to compensate individuals injured as a result of certain vaccines—DPT, DT, MMR, and polio vaccines. The compensation program is to be effective on enactment of a tax to fund it.

House bill

The House bill amends the Public Health Service Act to make changes in the vaccine compensation program and to provide an authorization for appropriations for compensation payments to children injured before the effective date of the program.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment.

The conference agreement reflects amendments to the National Childhood Vaccine Injury Act of 1986 (P.L. 99-660) which are intended to alter provisions in current federal law, including some regarding the appropriate court in which to bring vaccine actions.

The Vaccine Injury Compensation Act established an administrative proceeding in the United States district courts. This proceeding, which would begin with a special master, is the type of activity that has hitherto been done in an excecutive branch agency or before an Article III court presented questions regarding the separation of powers. Under the Vaccine Injury Compensation Act, when this proceeding was completed, the district court would enter a "judgment" which the petitioner could accept or reject. Such an option presented some questions under the "case or controversy" requirement of Article III. In addition to these problems, a policy issue concerning the best use of judicial resources was raised.

These and other issues were presented by the Judicial Conference of the United States, the American Bar Association, and others. These amendments answer these concerns by placing jurisdiction for vaccine injury claims in the United States Claims Court, an Article I court. The Claims Court sits throughout the nation, thus enabling claims to be heard expeditiously. Its judges are of the highest caliber and, being an Article I court, it is not bound by the "case or controversy" requirement.

The United States Claims Court was created on October 2, 1982, assuming all the original jurisdiction of the old United States

Court of Claims, which was an Article III court, as well as several new areas of jurisdiction. The Claims Court currently has sixteen Presidential-appointed and Senate-confirmed judges.

The Court's jurisdiction is nationwide. Cases are randomly assigned and each judge makes the final decision in each case on his or her docket. The Court operates under rules that follow the Federal Rules of Evidence. Its judgments are appealable to the United States Court of Appeals for the Federal Circuit.

Cases in the Claims Court include federal tax refund suits; government contract claims; patent and copyright infringement suits; military and civilian pay cases; Indian claims, and claims under the Constitution for taking of property by the United States. The Claims Court may award money damages, may order that certain actions be taken by excecutive officers of the United States, and, in specified cases, may grant equitable relief, having been granted exclusive jurisdiction for pre-awards of all government contracts. The Claims Court has concurrent jurisdiction with the United States District Courts in tax refund suits. The Claims Court currently has authority to utilize special masters, 28 U.S.C. 798(b). It is anticipated that special masters and judges would sit in various locations throughout the country, as well as in Washington, D.C. Claims Court judges currently travel throughout the country to accommodate the needs of the parties and witnesses in appropriate cases as dictated by statute: "with as little inconvenience and expense to citizens as is practicable." 28 U.S.C. 173. Moreover, "Any judge of the United States Claims Court may sit at any place within the United States to take evidence and enter judgment." 28 U.S.C. 2505. Accommodations for Claims Court judges sitting outside Washington, D.C., are currently provided for in 28 U.S.C. 462(d).

Currently, juries are not utilized in the Claims Court. The absence of juries in Claims Court cases results from the statutory provision regarding suits against the United States in cases before the court which provides: "Any action against the United States under Section 1346 shall be trial by the Court without a jury, except . " Because the United States is the defendant in cases currently heard in the Claims court, there have been no jury trials. The Supreme Court has held that the absence of a jury in suits against the government heard before the Claims Court is not controlled by the Seventh Amendment, *United States* v. *Sherwood,* 312 U.S. 584, 587 (1941); *McElrath* v. *United States,* 102 U.S. 426 (1880). The court itself was established as an administrative agency to settle claims against the United States. In Congressional reference matters, it still functions in much that way. Thus, providing for the vaccine claims function in the Claims Court establishes no new or troublesome precedent.

It may well be that the addition of these duties may require a modest amount of additional resources in the Claims Court. The exact nature and amount of such needs though, are unknown at this time.

One additional clarification is appropriate. In describing the requirement for standing to challenge regulations and decisions under the Act, the use of the term "any person" is intended to permit aggrieved parties to bring cases before Article III tribunals to the maximum extent possible consistent with the Constitution.

See *Valley Forge Christian College* v. *Americans United,* 454 U.S. 464 (1984); *Allen* v. *Wright,* 468 U.S. 737 (1985).

The amendments also delete from the Vaccine Act requirements that the court hearing the claim give advice to the Executive Branch concerning subrogation of claims.

G. STATE HEALTH INSURANCE POOLS

INCENTIVES FOR THE ESTABLISHMENT OF STATE HEALTH INSURANCE POOLS

(Section 9291 of House Bill)

Present law

States are not required to establish health insurance pools for the purpose of offering health insurance to people that are otherwise unable to purchase health insurance. Beginning in 1974, however, a number of states have enacted laws establishing comprehensive health insurance pools. These states are: Connecticut, Florida, Illinois, Indiana, Iowa, Maine, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, Tennessee, Washington and Wisconsin. These State pools are independent nonprofit corporations governed by a board and administered by an insurance carrier selected by the board.

In all but Connecticut, which allows all residents to buy insurance from the State pool, residents in the other States must be rejected for coverage by at least one private health insurance company in order to qualify for purchase of pool insurance.

The existing State pools are financed primarily by beneficiary premiums. To pay for any losses of the pool, the States have generally chosen to assess losses to insurance carriers in the State based on the percentage of insurance they sell in the State. Accordingly, only those employers that choose to provide health insurance through State regulated insurers are required to participate in the State pool. Because the Employee Retirement Income Security Act (ERISA) preempts State law, employer-based, self-funded health plans have been exempted from any State mandate to participate in such pools. Illinois is the one State that has chosen to fund pool losses through general revenues.

House bill

(a) *General Rule.*—Permits States which establish health insurance risk pools along the lines of this provision to subject their large employers to a Federal tax for failure to participate in the State pool. Amends Chapter 41 of the Internal Revenue Code of 1986 to provide for a tax on the wages paid by large employers that are not members of qualified State health insurance pools and that employ individuals to perform services in the same State that has established such a pool. Provides that the tax is equal to 5 percent of the wages paid by the employer during the taxable year for services performed in the State by its employees.

(b) *Large Employer Defined.*—Defines a large employer as one who, on each of some 20 days during the taxable year or the preceding taxable year (each day being in a different calendar week),

employed for some portion of the day 20 or more individuals. Provides that the term does not include the United States, any State or political subdivision, any possession of the United States, or any agency or instrumentality of any of the foregoing (including the Postal Service and Postal Rate Commission), except that the term does include any nonappropriated fund instrumentality of the United States.

(c) *Exception for Certain Churches and Associated Organizations.*—Exempts church organizations and organizations which are controlled or associated with a church from participation in the State health insurance pool if the church or organization states (in accordance with such procedures as the Secretary determines to be appropriate) that it is opposed to participation for religious reasons.

(d) *Qualified Health Insurance Pool Defined.*—Defines a qualified health insurance pool as any organization which: (1) is a nonprofit corporation established pursuant to and regulated by State law; (2) permits any large employer doing business in the State to be a participating member; (3) makes available (without regard to health conditions) to all residents of the State, who are not eligible for Part A of Medicare or for Medicaid, levels of health insurance typical of the levels of coverage provided through large employer groups. Provides that any such level of insurance: (1) must limit the amount of the annual out-of-pocket expenses for covered services under individual coverage to $2,000 and under family coverage to $4,000; (2) may not establish a lifetime benefit limit for any individual of less than $500,000. Provides that the coverage may provide for a choice of deductibles (in addition to the deductibles typical of levels of coverage provided through large employer groups) but such deductibles may not exceed $1,000 for each covered individual.

Provides that the insurance play may deny coverage for preexisting conditions for no longer than 6 months, except that a plan cannot deny coverage: (1) to a child born during a continuous period of coverage of the parent; (2) to a child who, at the time of the application to the plan, is under 1 year of age and with respect to whom lifetime limits of any private health insurance coverage have been exhausted; (3) for a condition of a child at the time of birth if the child is under 1 year of age at the time of application to the plan and the condition is diagnosed no later than 30 days after the date of the birth.

Provides that the coverage must include the purchase and repaid of medically necessary durable medical equipment. Provides that the plan may deny coverage for some or all services or costs directly relating to abortion.

Provides that a qualified pool shall charge a premium rate which is expected to be self-supporting based on a reasonable acturarial determination of anticipated experience and expected expenses. The premium rate may not exceed 150 percent of average premium rates for individual standard risks in the State for comparable coverage.

Requires the State health insurance pool to assess losses of the pool equitably among all particiapting members. Provides that a State or other entity may provide for payment of part or all of the

premium of the enrollees and may vary the amount of that payment based on an enrollee's income or on some other basis.

(e) *Other Definitions.*—Provides that the definition of terms "wages," "employee" and "employer" are found in the Federal Unemployment Tax provisions of the Internal Revenue Code. Provides that the term "State" includes the District of Columbia and the Commonwealth of Puerto Rico. Provides for other conforming and clerical amendments in the Internal Revenue Code.

Effective date.—Applies to taxable years beginning on or after January 1, 1989.

Senate amendment

(a) *General rule.*—No provision.

(b) *Large Employer Defined.*—No provision.

(c) *Exception for Certain Churches and Associated Organizations.*—No provision.

(d) *Qualified Health Insurance Pool.*—No provision.

(e) *Other Definitions.*—No provision.

Conference agreement

The conference agreement does not include the House provision regarding State Risk Pools. The managers agree that this provision will be considered during the conference deliberation on the catastrophic legislation.

TITLE V—ENERGY AND ENVIRONMENT PROGRAMS

Subtitle A—Nuclear Waste Amendments

Subtitle A of title 5 of the Senate bill reforms the nuclear waste management program established by the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101). The House bill contains no such provision.

The conferees agreed to a substitute, which redirects the nuclear waste program in a manner that will result in significant Federal budget savings in fiscal years 1988, 1989 and 1990. The substitute also provides for benefits to any Indian tribe, State or affected unit of local government within whose reservation or jurisdiction, as the case may be, a repository or monitored retrievable storage facility may be sited.

The substitute amends the Nuclear Waste Policy Act of 1982 as follows:

The First Repository

(1) The Department of Energy (DOE) is directed to characterize the Yucca Mountain, Nevada site for development of the first repository. Drilling of an exploratory shaft at the Yucca Mountain site may begin upon completion of the site characterization plan and public hearings required under the Nuclear Waste Policy Act.

(2) Site-specific activities for the Hanford, Washington and Deaf Smith County, Texas sites shall terminate within 90 days of enactment of the budget reconciliation legislation.

(3) DOE is authorized to site and construct, subject to existing licensing requirements, a deep geologic nuclear waste repository

only at the Yucca Mountain site. In the event that the Yucca Mountain site proves unsuitable for use as a repository, DOE is required to terminate site-specific activities and report to the Congress.

(4) The provisions of the Nuclear Waste Policy Act pertaining to the application of the National Environmental Policy Act (NEPA) are preserved except that the existing requirement that the environmental impact statement accompanying DOE's repository siting recommendation consider alternative sites is eliminated. NEPA applies to the redirected program under this Act in the same way as NEPA applied to the Nuclear Waste Policy Act of 1982. The conferees do not intend that enactment of the conference substitute result in any change in NEPA application except as expressly provided.

Monitored Retrievable Storage

(5) DOE's proposal to locate a monitored retrievable storage (MRS) facility is annulled and revoked. DOE is authorized to site, construct and operate one MRS facility as follows:

(a) DOE is authorized to conduct a survey of potentially suitable sites for an MRS facility. In so doing, the Secretary of Energy (the Secretary) may conduct site-specific activities at the sites for purposes of gathering the information necessary to support a license application. The survey may begin after the MRS commission established by the conference substitute reports to the Congress.

(b) DOE may select a site from among those surveyed after the Secretary recommends to the President a site for development as a repository.

(c) The selection of a site for an MRS facility shall not require an environmental impact statement but shall be accompanied by an environmental assessment.

(d) At least 6 months prior to selecting a site for an MRS facility DOE shall notify the affected state or Indian tribe. Prior to selection of an MRS site DOE shall hold at least one public hearing in the vicinity of such site for the purposes of receiving recommendations of interested parties.

(e) No MRS may be located in Nevada.

(f) When DOE selects an MRS site, the host state may disapprove the selection. The state's disapproval may be overridden by Congress under the expedited procedures contained in the Nuclear Waste Policy Act of 1982.

(g) Once a selection is made, the host state may enter into a benefits agreement pursuant to the conference substitute if such state surrenders its right to issue a notice of disapproval.

(h) Construction and operation of an MRS facility is subject to licensing by the Nuclear Regulatory Commission (NRC). The conditions imposed on such license are as follows:

—construction may not begin until a license for construction of a repository is issued by the NRC;

—the quantity of nuclear waste stored in the MRS may not exceed 10,000 metric tons until the repository begins accepting nuclear waste;

—the quantity of nuclear waste may not exceed 15,000 metric tons; and

—construction of an MRS facility or acceptance of nuclear waste shall be prohibited during the time a repository license is revoked by the NRC or construction of the repository ceases.

(i) A 3-member commission is established for purposes of reporting to the Congress by June 1, 1989 on the need for an MRS facility.

The Second Repository

(6) The requirements of the Nuclear Waste Policy Act for the siting of a second deep geologic repository are repealed. DOE is directed to report to the President and the Congress between 2007 and 2010 on the need for a second repository. Site-specific activities with respect to a second site are prohibited unless specifically authorized and appropriated. DOE is directed to terminate research on granite as a repository medium.

The Negotiator

(7) The President is directed to appoint a Negotiator to seek a state or Indian tribe willing to host a permanent repository or MRS facility at a suitable site. The Negotiator is authorized to negotiate the terms and conditions (including financial and institutional arrangements) under which the State or tribe would be willing to host a repository or MRS facility. Congress must approve and enact implementing legislation for an agreement reached by the Negotiator and state or tribe to take effect. The Negotiator's effort to find a state or tribe willing to host a repository or MRS facility are independent of, and would proceed in parallel with, DOE efforts to site a repository at Yucca Mountain, Nevada and an MRS facility.

Siting Benefits

(8) Impact assistance and grants-equal-to-taxes provisions of the Nuclear Waste Policy Act are broadened:

(a) to extend technical assistance to affected local governments;

(b) to extend mitigation assistance to cover impacts of site characterization activities; and

(c) to extend financial assistance and grants-equal-to-taxes to affected local governments (including special purpose taxing districts).

(9) DOE is authorized to make payments to Nevada as follows:

(a) $10 million per year after signing an agreement until the repository begins accepting nuclear waste; and

(b) $20 million per year after beginning to accept nuclear waste until closure of the repository.

DOE also is authorized to make payments to a state or Indian tribe hosting an MRS facility as follows:

(a) $5 million per year after signing an agreement until the facility begins accepting nuclear waste; and

(b) Sl0 million per year after beginning to accept nuclear waste until closure of the facility.

A state must waive its right to disapprove siting of a repository or MRS facility and its right to impact mitigation assistance under (8) (b) and (c), but not its right to technical assistance under (8) (a), in order to receive the foregoing payments. Impact assistance for a State or Indian tribe hosting an MRS facility under section 116 or 118, as affected by section 149, must be waived.

(10) An 11-member Nuclear Waste Technical Review Board is established to review technical aspects of DOE's nuclear waste program. The Board is authorized to make recommendations to DOE and the Congress.

(11) DOE is prohibited from shipping spent fuel or high-level waste except in packages certified by the NRC. DOE also is required to abide by NRC regulations on advance notification of state and local governments of nuclear waste shipments. In addition, DOE is directed to provide technical assistance and funding for training public safety officials of local governments and Indian tribes pertaining to nuclear waste transportation.

(12) DOE is directed to study subseabed disposal and the impact of siting the permanent repository in Nevada.

(13) DOE is directed to give special consideration to proposals from Nevada in siting federal research projects.

(14) DOE is directed to establish a new Office of Subseabed Research to study subseabed disposal of nuclear waste.

In addition, the conference substitute prohibits air transport of plutonium from one foreign nation to another through the air space of the United States unless the NRC certifies to Congress that the container is safe. The NRC's safety determination is to be based upon actual aircraft crash tests unless the NRC determines that other tests produces stresses in excess of those occurring during a worst-case accident. The conference substitute also directs DOE to study dry-cask storage of nuclear waste and authorizes appropriations for fiscal years 1988, 1989 and 1990.

Subtitle B—Federal Onshore Oil and Gas Leasing Reform Act of 1987

1. Minimum bid for competitive bidding

The House bill provides for a minimum bid fixed at $2 per acre.

The Senate amendment authorizes the Secretary to establish by regulation a national minimum acceptable price for all leases which is at least $10 per acre.

The conference amendment provides that the national minimum acceptable bid shall be set at $2 per acre for a period of 2 years after date of enactment. Thereafter, the Secretary may establish by regulation a national minimum acceptable bid higher than $2 per acre based upon certain findings. Ninety days before the Secretary makes any change in the national acceptable minimum bid, the Secretary shall provide notification to the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources. The proposal or promulgation of any regulations to establish the minimum bid shall not be considered major Federal actions subject to requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.

2. Land use planning

The House bill contains land use planning provisions that require oil and gas leasing be adequately evaluated in land use plans prior to leasing. The bill lists what is to be included in the plans.

The Senate amendment contains no provision.

The conference amendment deletes the House provision. The amendment requires that the National Academy of Sciences and the Comptroller General of the United States conduct a study of the manner in which oil and gas resources are considered in the land use plans developed in accordance with the Federal Land Policy and Management Act of 1976 and the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976. The conferees expect the National Academy of Sciences and the Comptroller General to consult with the States.

3. Forest Service consent/consultation

The House bill states that oil and gas leases may not be issued on public domain national forest lands without the consent of the Secretary of Agriculture.

The Senate amendment requires the Secretary of the Interior to consult with the Secretary of Agriculture prior to leasing.

The conference amendment deletes the Senate provision and modifies the House provision to require that no oil and gas lease shall be issued on National Forest System lands reserved from the public domain by the Secretary of the Interior over the objection of the Secretary of Agriculture.

This provision is not intended to cause duplication by the Department of Agriculture of the Department of the Interior's administration of oil and gas leases. Nothing in this provision is to preclude the current consultation process between the Department of the Interior and the Department of Agriculture.

4. Reclamation

The House bill provides for regulation by the Secretary of the Interior, or the Secretary of Agriculture as appropriate, of all surface-disturbing activities conducted pursuant to leasing. The provision includes approval by the appropriate Secretary of a plan of operation covering surface disturbing activities and requires that adequate reclamation be ensured.

The Senate amendment contains no provision.

The Senate recedes to the House.

5. Notice

The House bill requires public notification in the Federal Register, including maps or narrative descriptions, prior to offering lands for lease, prior to modification of lease terms, and of pending applications for permits to drill.

The Senate amendment contains no provision.

The conference amendment requires that notice, including maps or narrative descriptions, be posted in the appropriate leasing and land management offices. Nothing in this provision requires or precludes other forms of notification, such as mailings.

The conferees note that this is the only type of notice required by this subsection.

6. Over-the-counter phase-in

The House bill contains no provision.

The Senate amendment provides that lands currently available for leasing on an over-the-counter basis shall remain available on that basis for 24 months.

The Senate recedes to the House.

7. Secretarial discretion

The House bill gives the Secretary of the Interior the discretion to reject a bid at or over the minimum bid if he determines it does not represent a reasonable return to the public.

The Senate amendment contains no provision.

The House recedes to the Senate.

8. Bidding System

The House bill provides for oral bidding, except that sealed bids may be submitted.

The Senate amendment provides for oral bidding only.

The House recedes to the Senate.

9. Bidding application fee

The House bill provides for a $75 fee for bidding on competitive leases and for noncompetitive applications.

The Senate amendment contains no provision.

The conference amendment deletes the $75 bidding fee for competitive leases but retains the $75 application fee for leases issued without competitive bidding. This statutory application fee replaces the current $75 filing fee imposed by regulation.

10. Royalty rate

The House bill provides for a royalty rate of not less than 12½ percent.

The Senate amendment provides for a fixed 12½ percent royalty rate.

The conference amendment provides for a royalty rate of not less than 12½ percent for competitive leases and a fixed 12½ percent rate for noncompetitive leases. This is the same as existing law.

11. Rent/minimum royalty

The House bill provides for rent of not less than $2 per acre per year for the first 5 years of the lease term and not less than $3 per acre per year thereafter. The minimum royalty is not less than $3 per acre in lieu of rent.

The Senate amendment provides for rent of not less than $1 per acre per year. The minimum royalty is not less than $1 per acre in lieu of rent, except that no minimum royalty shall exceed the rent.

The conference amendment provides that the rent be not less than $1.50 per acre per year for the first 5 years and not less than $2 per acre per year thereafter. The minimum royalty is set at the rental rate. The rent and minimum royalty in this provision are to be prospective and apply only to those leases issued after the enact-

ment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

12. Period of availability for noncompetitive leasing ("recycle period")

The House bill provides that lands available for noncompetitive leasing under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 are to remain available noncompetitively for a period not to exceed one year.

The Senate amendment provides that lands available noncompetitively under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 are to be available noncompetitively for 3 years.

The conference amendment provides that these lands remain available noncompetitively for 2 years.

13. Alaskan acreage

The House bill provides that leases in Alaska be not larger than 5,760 acres.

The Senate amendment provides that leases in Alaska be not more than 5,120 acres.

The Senate recedes to the House.

14. Lease sale frequency

The House bill provides that lease sales shall be held not less frequently than quarterly.

The Senate amendment provides that lease sales be held at least every two months.

The Senate recedes to the House.

15. Pending applications

The House bill provides that all competitive bids and simultaneous leasing program applications pending on date of enactment, as well as over-the-counter applications filed prior to September 15, 1987, shall be processed pursuant to the Mineral Leasing Act of 1920, as in effect prior to enactment of this legislation.

The Senate amendment provides that all competitive bids and noncompetitive applications and offers pending on date of enactment be processed pursuant to the Mineral Leasing Act of 1920 as in effect prior to enactment of this legislation except for certain lands which initially shall be posted for competitive bidding.

The House recedes to the Senate.

16. Net versus gross receipts

The House bill contains no provision.

The Senate amendment provides that in determining the amount of mineral revenue payments to States under the Mineral Leasing Act of 1920, the amount of payments to the States shall not be reduced by any administrative or other costs incurred by the United States.

The House recedes to the Senate.

17. Lands not subject to leasing

The House bill provides that the Secretary shall not issue any oil and gas lease on certain specified Federal lands.

The Senate amendment contains no provision.

The Senate recedes to the House. This provision does not affect the rights of inholders in wilderness areas, nor shall the provision be construed to override statutes that expressly provide for leasing in wilderness study areas, such as the Wyoming Wilderness Act.

18. NEPA provisions

The House bill provides that the proposal or promulgation of certain final regulations is not a major Federal action subject to the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA).

The Senate amendment waives the section 102(2)(C) requirements of NEPA for the development of program regulations or holding particular lease sales.

The Senate recedes to the House. Enactment of this provision does not per se make lease sales subject to an environmental impact statement.

19. Prohibition on lease issuance due to non-reclamation

The House bill prohibits lease issuance to any person failing to reclaim a lease until such time as reclamation requirements are complied with.

The Senate amendment prohibits lease issuance or lease assignment to any entity that fails to reclaim a lease, or is controlled by or under common control with an entity failing to reclaim a lease.

The conference amendment blends the House and Senate provisions to prohibit lease issuance or lease assignment to any entity that fails to reclaim a lease, or is controlled by or under common control with an entity failing to reclaim a lease, until such time as reclamation requirements are complied with.

20. Anti-fraud provisions

The House bill provides for remedies, penalties, fines and imprisonment to combat fraudulent practices.

The Senate amendment includes language similar to the House provisions.

The conference amendment provides technical and clarifying changes to the Senate amendment.

Subtitle C—Land and Water Conservation Fund and Tongass Timber Supply Fund

SEC. 5201. LAND AND WATER CONSERVATION FUND ACT AMENDMENTS

The conference agreement on recreation fees resolves numerous minor language and technical differences between the House and Senate versions. The major differences resolved by the conferees are discussed briefly below.

1. Entrance Fee Levels

With some exceptions, both the House and Senate bills establish caps for park entrance fees at $3 per person or $5 per vehicle. The House bill permitted fees up to $10 per vehicle and $5 per person at Grand Canyon, Yellowstone, and Grand Teton National Parks. The Senate bill authorized these higher fees at Yellowstone, Grand

Teton and Glacier National Parks. The conference agreement established a maximum fee of $10 at Yellowstone and Grand Teton; $5 at Glacier, and effective at the beginning of Fiscal Year 1991, $10 at Grand Canyon.

2. Urban Fee Exclusion

The House bill prohibited an entrance fee at any park unit located in an urbanized area of 50,000 or more, where a fee was not charged as of September 30, 1986.

The Senate version prohibited an entrance fee at any park unit providing significant outdoor recreation opportunities in an urban environment where there are multiple access points.

The conference agreement adopts the Senate generic language but specifically prohibits the imposition of fees at the following units which would not otherwise be covered by the Senate provision: U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the national park system within the District of Columbia, Arlington House-Robert E. Lee National Memorial, San Juan National Historic Site, and Canaveral National Seashore.

3. Special Allocation of Certain BLM Recreation Fees

The Senate bill contains a provision directing that BLM fee revenue from the issuance of special recreation permits for private and commercial water based recreational activities (including but not limited to white water rafting, kayaking, and canoeing) be expended by the BLM for on the ground resource protection, visitor services, recreational facilities and other purposes directly related to these river based activities.

The House bill includes no such provision.

The conference agreement deletes the specific Senate provision but makes it clear that, to the extent feasible, recreation user fee money be used for authorized purposes directly related to the activities which generated the funds, such as camping and water-based recreational activities (e.g. various river running activities) on BLM lands. The need for the infusion of such funds is especially critical as recreation-related use of these rivers, especially on BLM lands, has risen dramatically while the BLM's recreation budgets have steadily declined.

4. Allocation of Park Fee Receipts

Both versions included essentially the same method for distributing park fee receipts among the various park units. The Senate bill, however, provided that 15 percent of the funds were to be allocated to the Director of the National Park Service to be distributed to park units on the basis of need.

The conference agreement provides a 10 percent discretionary fund to the Director. This money is to be spent at specific park units, not allocated in the Washington, DC or regional offices.

5. Repeal of Statutory Exemptions

The House bill repeals portions of various laws providing for specific fee exclusions at various parks.

The Senate bill included no such provision.

The conference agreement adopts the Senate position except that an entrance fee is authorized for Denali National Park and Preserve, Alaska. However, it is anticipated that, as provided in the conference agreement, a transportation fee will be imposed at Denali in lieu of an entrance fee.

6. Permanent Appropriation

In the House version, the allocation of the fee revenue was made subject to appropriation acts. The Senate bill made this allocation subject to appropriation only until FY 1991. Thereafter, such allocation would be made as part of a permanent appropriation.

The conference agreement adopts the House position. However, it is important to note that the conference agreement is predicated on these fee revenues being allocated to the park units as an addition to the unit's base funding level in accordance with the allocation formula set forth in fee legislation and not as an offset against existing funding.

SEC. 5202. TONGASS TIMBER SUPPLY FUND

The Senate bill included a provision that amended Section 705(a) of ANILCA to make the Tongass Timber Supply Fund subject to appropriations for FY 1988 and FY 1989. Under the Senate language, the permanent appropriation for the Tongass Timber Fund would be reinstated at the beginning of FY 1990. The House measure included no such provision.

The conference agreement adopted the Senate position.

Subtitle D—Reclamation

SEC. 5301. BUREAU OF RECLAMATION LOAN SALE PROGRAM

Senate Bill

The Senate bill authorizes the Secretary of the Interior to sell various Bureau of Reclamation loans. The loans authorized for sale include the distribution system loans, small reclamation loans, and rehabilitation and betterment loans. The net proceeds from these sales for fiscal year 1988 must be not less than $130,000,000. The Secretary is directed to protect the rights of the United States and borrowers in the conduct of such sale program.

House Bill

The House bill has no such provision.

Conference Agreement

The conference agreement modifies the language in the Senate bill. Subsection (a) is nearly identical to the Senate language. It authorizes the sale of loans in order to realize net proceeds of not less than $130 million in fiscal year 1988. The Secretary shall protect the rights of the United States and borrowers in the conduct of such sale program.

Subsection (b) provides that nothing in this section, including the prepayment or other disposition of any loan, shall alter the situation of a borrower with respect to the application of Federal Reclamation law if this section had not been enacted. For example, a

borrower who previously had the ability to prepay will gain whatever relief he would otherwise have had from the Federal government obtaining a prepayment and a borrower who could not prepay will be in exactly the same situation, with respect to the application of Federal law, as if there had not been a prepayment.

Subsection (b) also provides that nothing in this section shall authorize the transfer of title to any Federally-owned facilities funded by the loans specified in subsection (a) without a specific Act of Congress.

The conference agreement does not authorize the transfer of title to any projects or facilities to which title is vested in the United States, but does not preclude the transfer of any security interest which the United States may hold solely as collateral for a loan, if it does not hold title.

Subsection (c) directs that receipts from the sale or other disposition of the loans shall be deposited in the Treasury. The conference language also authorizes the Secretary to pay reasonable fees and expenses of operating the program out of the receipts from loan sales.

Subsection (d) provides that the authority for the Secretary to sell loans shall terminate on December 31, 1988. The conferees agree that the Secretary's authority should be temporary to enable proper Congressional oversight and review. If permanent authority is required, the Congress can provide it at a later date.

Subtitle D—Reclamation

SEC. 5302. RECLAMATION REFORM ACT AMENDMENTS

The Conferees on the part of the House and Senate are aware of concerns that have been expressed regarding compliance with the Reclamation Reform Act of 1982 (RRA). Simply stated, the main concern is that individuals or other legal entities may be improperly receiving the benefits of less than full cost water on landholdings which are greater than their entitlement under Reclamation law (e.g., 960 acres or the equivalent thereof for a qualified recipient, or 160 acres for a prior law recipient).

Allegations were made at hearings before the Senate Committee on Energy and Natural Resources that a small number of individuals are using trusts, farm management agreements, or other legal devices to effectively shift the economic benefit of the low cost irrigation water from the owner of an eligible landholding, to a legal entity which allegedly is not entitled to that water. The Conferees understand that these types of arrangements are not allowed or contemplated under the RRA. The Secretary has been requested to investigate these particular allegations and is currently doing so.

It is important to state that the RRA did not limit the size of a farming operation, but rather limited the benefits of less than full cost irrigation water (e.g., 960 acres for a qualified recipient, 320 acres to certain limited recipients, and 160 acres for a prior law recipient).

The Department of the Interior has established a special task force to audit individuals and entities for compliance with the Reclamation law and has committed to a program of rigorous enforcement. To obtain the necessary information to identify any abuses

and to vigorously pursue a systematic schedule of audits of individuals and entities subject to the law, the bill contains a statutory directive to the Secretary to complete a program of audits of individuals and entities subject to Reclamation law. The Secretary is directed to complete the audits within three years of legal entities and individuals whose landholdings are more than 960 acres. The Secretary is required to submit a report at least annually which summarizes the results of the audits conducted. In the course of these audits, the conferees expect the Secretary to use his existing authority under section 224(c) of the RRA to obtain such information as may be required to determine compliance with the law. The conferees expect the Secretary to review all relevant documents related to a farming operation, including but not limited to trust instruments, farm operation agreements, partnership agreements, and incorporation documents, to determine whether the terms of these instruments alone or when read together with other agreements, have the effect of shifting the economic benefits and risks associated with land from the landowner to another individual or entity. If the benefits and risks have been so shifted, the Secretary is expected to determine whether the individual or entity is receiving the benefit of low-cost irrigation water associated with a landholding in excess of that authorized by Reclamation law. If these limits are exceeded, the Secretary is expected to determine whether or not the full cost provisions of the RRA apply to the excess acreage. If the full cost provisions are applicable and proper payments have not been made, the Conferees expect, and the law requires, the amount of the underpayment to be collected. The Conference agreement amends the RRA by adding a new section 224(i), which makes it clear that the Secretary is required to collect any underpayment, plus interest, accruing from the date the payment was due.

The Conference agreement also makes an amendment to the RRA with respect to trusts. The amendment would require certain lands placed in trust to be attributable to the grantor if specific conditions are met. The Secretary shall provide a reasonable period of time, not to exceed 120 days from the date of enactment, in which existing trusts may wish to restructure to avoid payment of full cost as a result of this section.

The Conference agreement also amends the RRA with respect to the treatment of recordable contracts entered into prior to October 12, 1982, the date of enactment of the RRA. The amendment requires the imposition of full cost pricing to irrigation water delivered to lands subject to a recordable contract executed prior to October 12, 1982, and such lands have already received irrigation water at less than full cost for a period of ten years regardless of any extension or suspension of the contract for purposes of disposal of excess lands.

Subtitle E—Allocation of Abandoned Mine Reclamation Funds in Wyoming

The House bill included a provision that the State of Wyoming may, subject to a plan approved by the Governor, expend not more than $2,000,000 from its allocation of fiscal year 1987 appropriated

funds under section 402(g) of Public Law 95-87 for direct assistance to citizens evacuated from their homes in Campbell County, Wyoming, due to hazards from methane and hydrogen sulfide gases.

The Senate amendment contained no such provision.

The Senate recedes to the House.

Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) requires the Nuclear Regulatory Commission to collect annual charges from its licensees. The amount of the charges:

(A) when added to other amounts collected by the Commission, may not exceed 33 percent of the Commission's costs; and

(B) must be reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing the service.

Section 3010 of the Senate bill repeals section 7601 of Public Law 99-272 and authorizes the Commission to collect annual charges from its licensees only for fiscal years 1988, 1989, and 1990. The amount of the charges is increased for those years in an amount necessary to collect, when added to other receipts, 45 percent of the Commission's costs. The charges must also be reasonably related to the regulatory service provided and fairly reflect the Commission's cost of providing the service.

Sections 4301 and 5001 also repeal section 7601. Both section 4301 and section 5001 direct the Commission to collect annual charges from its nuclear power plant licensees, but neither section limits the amount of the charge to the Commission's cost of providing regulatory services to the licensee. Sections 4301 and 5001 require the Commission to collect charges in an amount necessary to collect, when added to other receipts, 100 percent and 75 percent, respectively, of the Commission's costs.

The conferees agreed to a substitute that amends section 7601 to increase the amount of the annual charge be an amount that, is equal to an additional six percent of the Commission's costs for fiscal years 1988 and 1989 beyond the 33 percent that the Commission is authorized to collect pursuant to this section and any amount that the Commission is authorized to collect pursuant to House Joint Resolution 395, but no less than a total of 45 percent of such costs. Beginning in fiscal year 1990, the amount of the annual charge will return to 33 percent of the Commission's costs. The conference substitute preserves the requirement of existing law that the amount of the annual charge be reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing the service.

FEES OF THE ENVIRONMENTAL PROTECTION AGENCY

Senate Bill

Section 3001 of the Senate bill authorizes the Administrator of the Environmental Protection Agency to assess and collect fees for services and activities it provides in the amount of $40 million annually in fiscal years 1988, 1989 and 1990. Fees collected pursuant to this provision would be deposited in a special fund at the Department of Treasury for appropriation to the Agency to support programs and activities for which the fee was charged.

House Bill

The House bill contains no comparable provision.

Conference Agreement

The managers agree to delete the Senate provision.

Statement of Managers on Oil Spill

The Managers agree to delete the House language contained in Title VI, Subtitle A regarding oil spill liability and compensation. The Managers also agree to extend the authorization for one year of the potential commencement date of an Oil Spill Liability Trust Fund and tax on petroleum pending enactment of authorizing legislation. This authorization is contained in section 4611(f)(2)(B) of the Internal Revenue Code. The Managers also agree to actively pursue separate oil spill legislation through the normal authorization process during the second session of the 100th Congress, attempting to complete action before expiration of the tax authorization.

TENNESSEE VALLEY AUTHORITY SALARIES

Senate bill

Section 3003 of the Senate bill authorizes the Tennessee Valley Authority to waive current salary caps in the case of twenty-five designated management employees involved in the Authority's nuclear power operations, provided the amount paid above the salary caps does not collectively exceed $900,000 per year.

House bill

The House bill contains no comparable provision.

Conference agreement

House and Senate conferees were unable to come to an agreement on this provision and agree that the provision will not appear.

NAVIGATION ENHANCEMENT USER FEES

Title VI, Subtitle B, of the House bill directs the Secretary of the department in which the Coast Guard is operating to establish fees to cover the costs of the United States to enhance the ability of a vessel to more safely transit the Persian Gulf.

Senate amendment

No provision.

Conference substitute

The House recedes.

TITLE VI—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS

FEDERAL EMPLOYEE PAY ADJUSTMENTS

House bill

Section 7001 of the House bill provides for pay adjustments for blue-collar and whitecollar Federal employees in fiscal years 1988, 1989, and 1990. The adjustments provided are 3 percent in fiscal year 1988, 4.8 percent in fiscal year 1989, and 5.2 percent in fiscal year 1990. Section 7001 further provides that the pay adjustments shall be delayed from October 1 until the following January 1 of each fiscal year in the case of white-collar employees, and shall be delayed by 90 days in the case of blue-collar employees. Finally, section 7001 provides that employing agencies shall absorb 65 percent of the cost of the pay raise in fiscal year 1988, and 50 percent in each of fiscal years 1989 and 1990.

Senate amendment

Section 5001 of the Senate amendment provides that the pay adjustment for Federal white-collar and blue-collar employees shall be 2 percent. It further provides that the pay adjustments in fiscal years 1988, 1989, and 1990 shall be delayed in the same manner as provided under the House bill. The Senate amendment also repeals section 601 of the National Defense Authorization Act for fiscal years 1988 and 1989. The effect of the repeal is to reduce the military pay raise for fiscal year 1988 from 3 percent to 2 percent. Finally the Senate amendment precludes any fiscal year 1988 pay adjustment for Members of Congress, judges, and top officials in the Executive Branch.

Conference agreement

The conference agreement contains no provisions on pay adjustments for Federal civilian and military employees. The conferees on the fiscal year 1988 continuing resolution have agreed to include in that legislation limits on civilian and military pay adjustments and their application in fiscal year 1988.

CONTINUATION OF 6-DAY MAIL DELIVERY

House bill

Section 7002 of the House bill reimposes the bar on the elimination of 6-day mail delivery. The bar applies through fiscal year 1990. This bar originated in the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). It was extended through fiscal year 1987 by the Deficit Reduction Act of 1984 (P.L. 98-369). It expired on October 1, 1987.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The House recedes to the Senate.

ELIMINATION OF AUTHORITY FOR MEMBERS OF THE POSTAL SERVICE'S BOARD OF GOVERNORS TO SERVE BEYOND THE EXPIRATION OF THEIR TERMS

House bill

Section 7003 of the House bill repeals the provision of law (39 U.S.C. 202(b)) which allows a member of the Postal Service Board of Governors to continue to serve for up to one year beyond the statutory expiration of his or her term if a successor has not been nominated and confirmed. This provision was enacted in 1983 (P.L. 98-81) and was intended to prevent short-term vacancies which routinely occurred while the confirmation process was underway. In practice, however, the provision has deterred the prompt filling of vacancies. In two instances where a Governor's term has expired, it took eleven months for a successor nominee's name to be submitted to the Senate.

Senate amendment

The Senate amendment contains no comparable provision.

Conference agreement

The House recedes to the Senate.

REDUCTION OF POSTAL SERVICE CAPITAL EXPENDITURES

House bill

The House bill has no provision.

Senate amendment

Section 5003 of the Senate amendment reduces the Postal Service's capital investment program by $402 million in fiscal year 1988 and $536 million in fiscal year 1989. The savings resulting from these capital investment reductions are required to be paid to the Civil Service Retirement and Disability Fund (Fund). In addition, beginning in fiscal year 1990, the Senate amendment requires the Postal Service to pay into the Fund on a cash basis in each fiscal year, an amount equal to the actual cost of civil service retirement cost-of-living adjustments paid to individuals who retire from the Postal Service on or after October 1, 1989.

Conference agreement

The conference agreement includes provisions capping Postal Service capital commitments and obligations at $625 million in fiscal year 1988 and $1.995 billion in fiscal year 1989. This will cause the Postal Service to defer three-fifths of its capital investment program in fiscal year 1988. The deferral of capital investments is for fiscal year 1988 only. The capital investment deferral reduces Postal Service capital outlays by $350 million in fiscal year 1988 and $465 million in fiscal year 1989.

The conferees note that there is a disagreement between the Postal Service and the Congressional Budget Office and the Office of Management and Budget over whether the above figures accurately reflect the Service's capital investment program. The figures quoted are CBO/OMB numbers.

In fiscal year 1988, the Postal Service is required to pay $350 million to the Civil Service Retirement and Disability Fund. In fiscal year 1989, the Postal Service is required to pay $465 million into a "Postal Service Escrow Fund" created and maintained by the Department of the Treasury. Funds deposited in the escrow account will not be available to the Postal Service in fiscal year 1989.

It is the view of a majority of the conferees of the authorizing committees that consideration should be given to restoring the Postal Service to the off-budget status it enjoyed prior to 1985. Toward that end, the authorizing committees intend to request that the General Accounting Office and the Congressional Budget Office study the implications of taking the Postal Service off-budget and report to the respective authorizing committees. The Postal Service is a self-financing entity with a mandate to meet operating and capital expenses through income and effective financial management. The Postal Service in no way contributes to the deficit problems faced by the Federal Government. Subjecting the Service to the constraints of a congressional and executive budget process threatens its ability to maintain the service necessary to sustain the nation's commerce and lines of communication. In order to best serve the public interest, the Postal Service must remain a free and independent entity.

It is the intent of the conferees of the authorizing committees that there should be no erosion of the Private Express Statutes. The Postal Service has proven itself capable of providing efficient and economical service since the time of the Postal Reorganization Act of 1970, particularly under the current Postmaster General and a management team and work force dedicated to public service.

REDUCTION OF POSTAL SERVICE OPERATING EXPENSES

House bill

The House bill has no provision.

Senate amendment

Section 5004 requires the Postal Service to reduce its operating expenses in fiscal years 1988 and 1989 by a sufficient amount to pay to the Federal Employees Health Benefits Fund an amount equal to the cost of the employer portion of the health insurance premiums for retirees of the Postal Service. The estimated amount of the payments required (and corresponding reductions in operating expenses) are $375 million in fiscal year 1988 and $465 million in fiscal year 1989. The Senate amendment specifies that these payments must be made without (i) increasing borrowing, (ii) increasing the operating budget of the Postal Service, or (iii) increasing postal rates for the purposes of financing such payments. The Senate amendment further requires the Postal Service to develop a productivity improvement plan designed to achieve the required operating cost savings and report periodically to the President and the Congress on progress in achieving the required savings. The Senate amendment requires the General Accounting Office to audit the Postal Service to determine if it has complied with the requirements of the Senate amendment. Any required fiscal year 1988 or

1989 savings which are not achieved are offset by cuts in the Postal Service capital investment program in fiscal year 1990.

Conference agreement

The conference agreement includes provisions requiring the Postal Service to pay $160 million in fiscal year 1988 and $270 million in fiscal year 1989 into the Federal Employees Health Benefits Fund.

The conference agreement specifies that the Postal Service must not (i) increase postal rates, (ii) increase borrowing, or (iii) use any budgetary resources other than those derived from the operating budget of the Postal Service in order to make these payments.

The conference agreement requires the Postal Service to formulate an implementation plan specifically enumerating the methods by which the Postal Service shall fulfill the requirements of the agreement and report periodically to Congress on its progress in achieving the required savings. The General Accounting Office is directed to audit the Postal Service to determine if it has complied with the requirements of the agreement and report those findings to Congress. The conference agreement further provides that, based upon GAO's determination of compliance, Congress shall consider the appropriate remedy necessary to enforce compliance with the conference agreement.

It is the intent of the conferees that the Postal Service, in satisfying the mandates of the conference agreement in reducing costs, give high priority to maintaining service standards presently enjoyed by the users of the Service. In addition, the Postal Service is expected to consult with employee organizations concerning actions affecting service.

DEFERRED PAYMENT OF RETIREMENT LUMP-SUM CREDIT

Conference Agreement

The conference agreement provides for deferred payments of the lump-sum credit that certain employees elect to receive upon retirement. Under the terms of the conference agreement, an employee whose eligibility for an annuity commences after January 3, 1988, and before October 1, 1989, would receive 60 percent of the amount of the lump-sum credit which such employee elects at the time of retirement, and 40 percent of the amount of the lump-sum credit on the date 12 months after the date on which the lump-sum credit would otherwise have been paid. The conference agreement further provides that the Office of Personnel Management shall prescribe regulations under which the deferred payment provisions shall not apply in the case of an employee who is involuntarily separated for reasons other than cause and in the case of an individual to whom the application of the provisions would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

The conferees intend that the lump-sum benefit presently available to retirees shall remain secure and intend that the provisions of the conference agreement should in no way be interpreted as detracting from Congress' commitment to sustaining this important benefit as a matter of public policy.

The conferees do not believe that the change in the treatment of the lump-sum credit in fiscal years 1988 and 1989 should be a precedent for any such modifications in the future.

TECHNICAL CLARIFICATION

Conference Agreement

Although the conferees do not believe that section 6004 is necessary, it has been included to ensure proper scorekeeping of the savings provisions in this title.

TITLE VII—VETERANS' PROGRAMS

SALES OF VENDEE LOANS WITH OR WITHOUT RECOURSE

House bill

The House bill (section 8001) would state certain findings regarding adverse effects resulting from the recent change of the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) in accounting for vendee-loan notes sold with recourse by the Veterans' Administration (VA). It would also express the sense of the Congress that the CBO should reverse its decision and that any change in the assets sales policy of the VA should not be considered in future budget resolutions as a means of achieving deficit reduction. (Vendee-loan notes are promissory notes evidencing loans made by the VA to finance the sale of homes it has acquired as the result of foreclosures on VA-guaranteed loans or direct VA loans.)

Senate amendment

The Senate amendment (section 7001) would repeal paragraph (3) of section 1816(d) of title 38, United States Code, which prohibits the VA from selling vendee-loan notes without recourse unless the amount received is not less than the unpaid balance of the loan.

Conference Agreement

The conference agreement (section 7001) would, effective with respect to sales made from the date of enactment through September 30, 1989, amend section 1816(d)(3) to eliminate the restriction on without-recourse sales and to permit the VA to sell vendee-loan notes either with or without recourse depending on the Administrator of Veterans' Affairs' determination, with respect to a proposed sale of such notes, as to which basis would be in the best interest of the effective functioning of the loan guaranty program, taking into account the comparative cost-effectiveness of selling the notes on each of the two bases. The Administrator would be required, in making that comparison, to determine and consider, based on estimates of market conditions and other pertinent factors at the time of sale, (a) the average amount by which the selling price for the notes if sold with recourse would exceed the selling price of the notes if sold without recourse; and (b) the total cost of selling the notes with recourse, including various cost factors specified in the legislation.

The Administrator also would be required, within 60 days after making any sale of such notes prior to October 1, 1989, to submit to

the House and Senate Veterans' Affairs Committees a report (a) describing the application of the provisions of this section and the determination made thereunder with respect to each of the specified factors, (b) comparing the actual results of the sale with the anticipated results, and (c) describing any steps taken to facilitate the marketing of such notes.

Beginning on October 1, 1989, the current-law restriction on the sale of notes without recourse would be reinstated.

The conferees from the House and Senate Veterans' Affairs Committees note that those Committees are distressed that their ability to consider and recommend legislation with regard to the policy of selling vendee-loan notes with or without recourse has been diminished by scorekeeping policies recently adopted by the CBO and the OMB, especially since those policies were adopted without any consultation with those Committees.

LOAN FEE EXTENSION

Senate amendment

The Senate amendment (section 7002) would amend section 1829(c) of title 38, relating to the 1-percent fee generally imposed on veterans who obtain a loan guaranteed, insured, or made by the VA, to extend the loan fee through September 30, 1989.

House bill

No provision.

Conference Agreement

The conference agreement (section 7002) contains the Senate provision.

The conferees note that an identical provision is contained in section 2(a) of the House and Senate Committees on Veterans' Affairs compromise agreement on H.R. 2672/S. 1801, passed by the House on November 17, 1987, and by the Senate on December 4, 1987, and now awaiting the President's signature.

CASH SALES OF PROPERTIES ACQUIRED THROUGH FORECLOSURES

House bill

The House bill (section 8003) would amend section 1816(d) of title 38, relating to the proportions of properties acquired as the result of defaults on VA-guaranteed loans which can be sold for cash and by means of loans made by the VA (so-called "vendee loans"), to increase, for fiscal years 1988, 1989, and 1990, the proportion of acquired properties which the VA is required to sell on a cash rather than vendee-loan basis from a minimum of 25 percent and a maximum of 40 percent to a minimum of 35 percent and a maximum of 50 percent.

Senate amendment

Same provision (section 7003).

Conference agreement

The conference agreement (section 7003) contains this provision.

The conferees note that an identical provision is contained in section 6(a) of the above-noted compromise agreement on H.R. 2672, which is awaiting Presidential signature.

STATUTORY CONSTRUCTION

Senate amendment

The Senate amendment (section 7004(a)), in a freestanding provision, would clarify that the provisions in section 7003 of the bill (described above) satisfy section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119), subsection (a) of which generally prohibits treating a law that transfers a receipt from one fiscal year to an adjacent fiscal year as altering the deficit or producing a net deficit reduction. Subsection (b) of section 202 provides that the subsection (a) prohibition "shall not apply if the law making that transfer stipulates that such transfer . . . achieves savings made possible by changes in program requirements . . ." Section 7004 states that, for the purposes of those provisions, title VII achieves savings made possible by changes in program requirements, namely, by requiring a greater proportion of cash sales and a reduced proportion of Government loans.

The Senate amendment (section 7004(b)), in light of the possibility that certain provisions identical to those in sections 7002 and 7003 may be enacted in H.R. 2672, would also provide in a freestanding provision that identical provisions not be incorporated in title 38 of the United States Code twice.

House bill

No provision.

Conference Agreement

The conference agreement (section 7004) contains the Senate provisions.

GUARANTY AMOUNT

House bill

The House bill (section 8002) would amend section 1803(a)(1) of title 38, relating to the maximum VA loan guaranty amount for conventional homes, to change the current-law maximum of 60 percent of the amount of the loan or $27,500, whichever is less, to 40 percent of the amount of the loan or $40,000, whichever is less.

The House bill also would amend section 1819(c) of title 38, relating to the maximum VA loan guaranty amount for manufactured homes, manufactured-home lots, or manufactured homes and lots, to change the current-law maximum of 50 percent of the amount of the loan or $20,000, whichever is less, by reducing the 50-percent figure to 30 percent and making no change in the $20,000 figure.

Senate amendment

The Senate amendment contains no comparable provision. However, section 2(a) of S. 1801, as incorporated in H.R. 2672 as passed by the Senate on October 30, would have increased the dollar maxi-

mum of the guaranty for loans for conventional homes to $36,000 and would have made no change in the 60-percent figure or in the maximum guaranty for manufactured housing.

Conference agreement

No provision.

The conferees note that section 3 of H.R. 2672 would, effective generally with respect to loans for which settlement occurs after January 31, 1987, change the maximum VA loan guaranty amount (a) for conventional homes to (1) 50 percent of the amount of the loan for loans of $45,000 or less and (2) to 40 percent of the amount of the loan or $36,000, whichever is less, with a minimum guaranty of $22,500 for loans greater than $45,000, and (b) for manufactured housing to 40 percent of the loan amount, with no change in the $20,000 figure.

TITLE VIII—BUDGET POLICY AND FISCAL PROCEDURES

I. DEFENSE AND DOMESTIC DISCRETIONARY SPENDING LIMITS

House bill

The House bill had no such provision.

Senate amendment

Sections 9001(a) and 9001(b) of the Senate amendment set forth the levels of budget authority and budget outlays for fiscal years 1988 and 1989 for major functional category 050 (National Defense) and for all discretionary spending in categories other than major functional category 050 (National Defense). These levels, which are shown in the table below (in billions of dollars), are consistent with the summit agreement on deficit reduction.

	1988	1989
Defense (050):		
Budget authority	292.0	299.5
Outlays	285.4	294.0
Non-defense:		
Budget authority	162.9	166.2
Outlays	176.8	185.3

The levels of budget authority and outlays contained in sections 9001(a) and 9001(b) are below the Congressional Budget Office's estimate of the baseline specified by section 251(b)(6) of Gramm-Rudman-Hollings by the following amounts (in billions of dollars):

	1988	1989
Defense (050):		
Budget authority	10.9	15.7
Outlays	5.0	8.2
Non-defense:		
Budget authority	5.0	8.1
Outlays	2.6	3.4

In the Senate, a three-fifths point of order will lie against any fiscal year 1989 budget resolution that is not consistent with these levels. In addition, the House and Senate Appropriations Committees must make their 302(b) subdivisions for 1989 consistent with the defense and domestic spending ceilings specified in this amendment.

Conference agreement

The conference agreement adds language providing for compliance with the ceilings by the House Committee on the Budget. It also requires that the joint statement of managers on the fiscal year 1989 budget resolution shall make allocations under section 302(a) of the Congressional Budget Act, and that the Appropriations Committees shall make their allocations under section 302(b)(1) of that Act, consistent with the defense and nondefense levels set forth in this section.

II. LANGUAGE RESCINDING THE SEQUESTER ORDER

House bill

The House bill had no such provision.

Senate amendment

The Senate amendment contains language that rescinds the sequester order issued by the President on November 20, 1987. In addition, this language restores any sequestrable resource that has been reduced or sequestered by the final order except for reductions in payments to medicare providers.

The Finance Committee's recommendations specify that the reductions for physician services and durable medical equipment would continue through January 15, 1988 while all other reductions in provider payments would expire December 31, 1987.

The language of the Senate amendment specifically notes this exception. The language of the Senate amendment makes the rescinding of the sequester order and the restoration of sequestered resources dependent upon the enactment of a fiscal year 1988 continuing resolution and a reconciliation bill that achieve the deficit reduction contemplated in the summit agreement.

Conference agreement

The conference agreement perfects the language of the Senate amendment by rescinding both the initial and final sequester orders. The conferees intend that funding will be available and that benefits will be paid as though no sequester for fiscal year 1988 had ever been required.

The conferees intend that upon the enactment of the reconciliation bill and the full-year continuing appropriations bill for fiscal year 1988, the President shall take whatever steps are necessary to undo the effects of the sequester. The conferees intend that the language of this section will empower and instruct the President to take those steps.

Among other things, this provision is intended to authorize, for example, the Secretary of Agriculture to make payments to persons whose receipt of government payments was reduced during

the period that the sequester order was in effect. These payments would be in the amount necessary to compensate these persons for the reductions. For this purpose, persons who sold commodities (or manufactured commodities that were subsequently sold to the Commodity Credit Corporation) or entered into loan agreements with respect to commodities or otherwise participated in programs conducted by the Department of Agriculture during the period of the sequester order should be treated as if the sequester did not go into effect.

The conference agreement makes the restoration of sequestered funds contingent upon the enactment of both the reconciliation bill and the full-year continuing appropriations bill for fiscal year 1988.

III. SUBMISSION OF PRESIDENT'S BUDGET

House bill

The House bill had no such provision.

Senate amendment

The amendment contains language changing the date for the submission of the President's budget to January 25 in 1988 and making other, conforming changes.

Conference agreement

The Senate recedes to the House.

IV. TECHNICAL AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT

House bill

The House bill had no such provision.

Senate amendment

The Senate amendment makes technical corrections to the Congressional Budget Act. The amendment revises the table of contents of the Act by striking "Disapproval of proposed deferrals" and inserting "Proposed deferrals" so that the table of contents will conform with the section headings as they were amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. The amendment renumbers subparagraph headings in section 3(a)(7) of the Congressional Budget Act and strikes a redundant paragraph to implement the changes made there by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. The Senate amendment inserts a comma to make the structure of a sentence clearer after amendment by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. Finally, the amendment substitutes "proposed" for "made" with regard to amendments in committee to conform with the reality that Senate committees merely propose amendments rather than make them.

Conference agreement

The conference amendment includes the Senate technical amendments as well as an additional technical correction to the Balanced Budget and Emergency Deficit Control Act of 1985 specifying that,

in constructing its budget baseline for the purposes of that Act, the Congressional Budget Office and the Office of Management and Budget shall assume that the Federal Housing Administration mortgage insurance program is a permanent, ongoing program. This clarifies the law to conform with existing Congressional Budget Office and Office of Management and Budget practice.

TITLE IX—INCOME SECURITY AND RELATED PROGRAMS

A.—OASDI PROVISIONS

EXTEND FICA TAX TO INACTIVE DUTY RESERVISTS

(Section 9001 of the House Bill Section 4588 of the Senate Amendment)

Present law

Wages paid for certain military training for the reserves are not subject to FICA tax.

House bill

FICA taxes would be extended to inactive duty training (generally weekend training).

Effective date.—The provision would apply with respect to services performed after December 31, 1987.

Senate amendment

Similar provision, except that the Senate amendment does not extend to inactive duty training the additional, general-revenue-financed social security wage credits which are provided for wages earned in active duty.

Conference agreement

The conference agreement follows the House bill, with the addition of the Senate amendment concerning additional military wage credits.

The provision would be effective with respect to * * * after December 31, 1987.

2. EXTEND FICA TAX TO WAGES OF CERTAIN AGRICULTURAL EMPLOYEES

(Section 9002 of the House Bill; Section 4587 of the Senate Amendment)

Present law

Cash wages paid by an employer to an employee for agricultural labor in any calendar year are subject to FICA tax only if (1) the employee received cash remuneration of at least $150, or (2) the employee performed 20 or more days of agricultural labor for that employer.

House bill

Provides that the 20-day test would be eliminated and that any remuneration for agricultural labor paid by an employer to an employee would constitute wages if the employer pays more than

$2500 to all employees for such labor during the taxable year. However, the $150 annual cash pay test would continue to be applied if the $2500 annual payroll test is not met.

Effective date—This provision would apply to remuneration paid for agricultural labor after December 31, 1987.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill.

3. FICA TAX APPLICATION TO EMPLOYER COST OF GROUP TERM LIFE INSURANCE

(Section 9003 of the House Bill; Section 4590 of the Senate Amendment)

Present law

The cost of group term insurance provided by an employer to an employee is excluded from wages for FICA purposes. For income tax purposes, the cost of employer-provided group term life insurance is includible in an employee's gross income to the extent that the coverage exceeds $50,000. Additionally the total amount of employer-provided group term life insurance is included in an employee's gross income if the coverage is provided on a discriminatory basis.

House bill

The cost of employer-provided group term life insurance is included in wages for FICA tax purposes if such insurance was includible for gross income tax purposes.

Effective date.—This provision applies to group term life insurance coverage in effect after December 31, 1987.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House bill.

4. COVERAGE OF SERVICES PERFORMED BY ONE SPOUSE IN THE EMPLOY OF ANOTHER

(Section 9004 of the House Bill; Section 4591 of the Senate Amendment)

Present law

Covered employment for FICA tax purposes does not currently include wages paid to a spouse in the employ of his or her spouse.

House bill

FICA tax is extended to wages paid for services performed by an individual in the employ of his or her spouse's trade or business.

Effective date.—The provision applies with respect to services performed after December 31, 1987.

Senate amendment

Similar provision.

Conference agreement

The conference follows the House bill, except the provision would be effective with respect to remuneration paid after December 31, 1987.

5. COVERAGE OF SERVICES PERFORMED BY AN INDIVIDUAL IN THE EMPLOY OF A PARENT

(Section 9005 of the House Bill Section 4592 of the Senate Amendment)

Present law

Wages paid for service performed by a child under the age of 21 in the employ of his or her father or mother are not subject to FICA tax.

House bill

FICA tax is extended to services performed by individuals between the ages of 18 and 21 who are employed in their parent's trade or business.

Effective date.—The provision applies with respect to services performed after December 31, 1987.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House bill, except the provision would be effective with respect to remuneration paid after December 31, 1987.

6. EXPAND EMPLOYER SHARE OF FICA TAX TO INCLUDE ALL CASH TIPS

(Section 9012 of the House Bill) (Section 4587 of the Senate Amendment)

Present Law

Special rules apply for purposes of calculating FICA taxes payable by employees and employers with respect to tips. For purposes of the employee FICA tax, tips received by employees are considered remuneration for services and are subject to the tax. The full amount of tips received by an employee is not, however, usually subject to the FICA tax imposed on the employer. Instead the employee is deemed to receive wages for purposes of the employer's share of FICA taxes only to the extent the Federal minimum wage exceeds the actual wage rate paid by the employer. Any tips received in excess of the difference between the minimum wage and the wages paid are not subject to the employer's portion of the tax.

House bill

For purposes of the employer's share of FICA taxes, all cash tips would be included within the definition of wages. Thus employers must pay FICA taxes on the total amount of wages and cash tips up to the Social Security wage base.

Effective date.—The provision would apply to tips received and wages paid on or after January 1, 1988.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill.

7. APPLICABILITY OF GOVERNMENT PENSION OFFSET TO CERTAIN FEDERAL EMPLOYEES

(Section 9006 of the House bill)

Present Law

Social security benefits payable to spouses of retired, disabled, or deceased workers are generally reduced to take account of any public pension the spouse receives as a result of work in a government job not covered by social security. The amount of the reduction is equal to two-thirds of the government pension. The offset does not apply to workers whose government job is covered by social security on the last day of the person's employment.

Generally, Federal workers hired before 1984 are part of the Civil Service Retirement System (CSRS) and are not covered by social security. Federal workers hired after 1983 are covered by the Federal Employees' Retirement System Act of 1986 (FERS), which includes coverage by social security. The FERS law provides that employees covered by the CSRS will be given the opportunity from July 1, 1987 to December 31, 1987 to make a one-time election to join FERS (and thereby obtain social security coverage). Thus, a CSRS employee who switches to FERS during this period immediately becomes exempt from the government pension offset.

House bill

Federal employees who switch from CSRS to FERS during the July 1-December 31, 1987 election period are exempt from the government pension offset only if they have 5 or more years of Federal employment covered by social security after June 30, 1987. Certain legislative branch employees mandatorily covered by social security by the 1983 Social Security Amendments are exempt only if they have 5 or more years of Federal employment covered by social security after December 31, 1983.

A transition rule is provided for those nearing retirement.

Effective date.—Applies with respect to benefits for months after June 1987, except for benefits to certain legislative employees mandatorily covered by social security by the 1983 Social Security Amendments who applied for spousal benefits before July 1, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification making the 5 year requirement effective prospectively; that is, it would be effective with respect to employees who elect to become covered under FERS during any election period which may occur on or after January 1, 1988. The provision also applies to certain legislative branch employees who first become covered under FERS on or after January 1, 1988. The provision would be effective with respect to social security benefits for months after December 1987 except for benefits to certain legislative employees who applied for special benefits before January 1, 1988.

8. EXEMPTION FROM REDUCTION IN "WINDFALL" BENEFIT

(Section 9007 of the House Bill)

Present Law

Under the so-called "windfall" benefit provision of the Social Security Amendments of 1983, social security benefits are generally reduced for workers who also have pensions from work that was not covered by social security (e.g., work under the Federal Civil Service Retirement System). Under the regular, weighted benefit formula, benefits are determined by applying a percentage to average indexed monthly earnings. In 1987, benefits equal 90 percent of the first $310 of average indexed monthly earnings, 32 percent of earnings from $310 to $1866, and 15 percent of earnings above $1866. The formula applicable to those with pensions from noncovered employment substitutes 40 percent for the 90 percent factor in the first bracket. (The second and third factors remain the same.) The resulting reduction in the worker's social security benefit is limited to one-half the amount of the noncovered pension. The new law is being phased in over a 5-year period beginning with those first eligible for social security benefits and noncovered pensions in 1986.

Workers who have 30 years or more of social security coverage are fully exempt from this treatment. For workers who have 26-29 years of coverage, the percentage in the first bracket in the formula increases by 10 percentage points for each year over 25, as illustrated below:

Years of social security coverage: First factor in formula	Percent
25 or less	40
26	50
27	60
28	70
29	80
30 or more	90

House bill

The years of social security coverage required in order for an individual to be exempt from the alternate benefit formula is lowered

from 30 to 25 years. Similarly, the years of coverage at which the formula gradually takes effect are scaled back, as illustrated below:

Years of social security coverage: First factor in formula	(Percent)
20 or less	40
21	50
22	60
23	70
24	80
25 or more	90

Effective date.—This provision is effective for benefits payable for months after December 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

9. MODIFICATION OF AGREEMENT WITH IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN

(Section 9008 of the House bill)

Present Law

Social security coverage for employees of State and local governments is optional. States elect coverage for themselves and their political subdivisions through agreements with the Secretary of Health and Human Services.

In 1986, the Iowa State Supreme Court held that the agreement between Iowa and the Secretary did not include certain police and firefighter positions. This decision effectively took away their coverage though they had paid FICA tax on their wages for many years.

House Bill

Allows the State of Iowa until 1989 to modify retroactively its agreement with the Secretary of Health and Human Services to provide coverage for certain police and firefighter positions.

Effective date.—Upon enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

10. INTERIM DISABILITY BENEFITS IN CASES OF DELAYED FINAL DECISIONS

(Section 9009 of the House bill)

Present law

If, upon appeal, an individual receives an unfavorable determination from an Administrative Law Judge (ALJ) at the hearing stage,

he or she may appeal to ALJ's decision to the Social Security Administration's Appeals Council. If the individual receives a favorable determination from an ALJ, the Appeals Council may review the determination on its "own motion." Interim disability benefits are not paid while a case is under review by the Appeals Council.

House bill

In any disability case under Title II or Title XVI of the Social Security Act in which an ALJ has made a decision favorable to the individual and the Appeals Council has not rendered a final decision within 110 days, interim benefits must be provided to the individual. (Delays in excess of 20 days caused by or on behalf of the claimant do not count in determining the 110 day period.) These benefits will commence with the month before the month in which the 110 day period expired and may not be considered overpayments if eligibility is subsequently denied, unless the benefits were fraudulently obtained.

Effective date.—The provision is effective with respect to favorable ALJ determinations made 180 days or more after enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

11. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL

(Section 9010 of the House bill)

Present law

A disability insurance beneficiary who is determined to be no longer disabled can appeal the determination sequentially through three appellate levels within the Social Security Administration: a reconsideration usually conducted by the State Disability Determination Service that rendered the initial unfavorable determination; a hearing before an SSA administrative law judge; and a review by a member of SSA's Appeals Council.

The beneficiary has the option to have his or her benefits continued through the hearing stage of appeal. If the earlier unfavorable determinations are upheld by the ALJ, the benefits paid during the period of appeal are considered overpayments and are subject to recovery by the agency. (If an appeal is made in good faith, benefit repayment may be waived.) Medicare elibigility is also continued, but Medicare benefits are not subject to recovery.

This option was originally enacted in 1983 and has been extended twice. The latest extension, provided in Public Law 98-460, the Social Security Disability Reform Act of 1984, authorizes the payment of interim benefits to persons in the process of appealing termination decisions made before January 1, 1988. Such payments may continue through June 30, 1988 (i.e., through the July 1988 check).

House bill

The period in which benefits can be paid and Medicare eligibility continued while an appeal is in progress is extended for 1 year. Benefits may be paid while an appeal is in progress with respect to unfavorable determinations made on or before December 31, 1988 and may be continued through June 1989 (i.e., through the July 1989 check).

Effective date.—Upon enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

12. EXTENSION OF DISABILITY REENTITLEMENT PERIOD

(Section 9011 of the House bill)

Present Law

A disability insurance beneficiary can attempt to return to work under a so-called trial work period that can be up to 9 months long, provided his or her medical condition has not improved to the extent that he or she would no longer meet the definition of disability. Benefits are continued during this period. If in the 10th month, earnings constitute "substantial gainful activity" (currently earnings of $300 or more per month), cash benefits will be terminated two months later. In addition, a beneficiary who completes 9 months of trial work and continues to have a disabling impairment can have his or her benefits re-instated any time during the next 15 months (the reentitlement period) if the attempt at work fails (i.e., his or her earnings fall below $300) without the need for a new application and disability determination. Medicare eligibility continues for two years beyond the 15-month reentitlement period.

House bill

The period in which DI benefits can be reinstated is lengthened by 45 months, i.e., from 15 months to 60 months. As under current law, Medicare eligibility continues for two years beyond the 60-month reentitlement period.

Effective date.—The provision is effective January 1, 1988, and applies to individuals who are entitled to disability benefits after December 1987 and individuals who are within the 15-month reentitlement period.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House, with an amendment increasing the reentitlement period to 36, rather than 60, months. Medicare eligibility would continue for the 39 month period provided by current law (that is, two years past the previous 15 month reentitlement period).

13. FEES FOR REPRESENTATION OF CLAIMANTS IN ADMINISTRATIVE PROCEEDINGS

(Section 9021 of the House bill)

Present law

Attorneys often represent claimants who appeal decisions by SSA. Appealed decisions usually concern disability benefits. There are several layers of administrative appeal available before judicial review. At the Administrative Law Judge (ALJ) level, about 65 percent of the claimants are represented by attorneys.

The amount of the fee that an attorney or other person may charge a claimant for services performed as a representative in dealings with SSA must be approved by SSA. Section 206(a) of the Social Security Act requires that SSA set a "reasonable" fee as compensation for the attorney's services. If the claimant receives a favorable decision and become entitled to retroactive benefits, the Act also requires that SSA withhold part of the beneficiary's past-due benefits for payment directly to the attorney. The amount withheld must be the smaller of 25 percent of past-due benefits, the amount set by SSA, or the amount agreed upon by the attorney and the claimant.

Under administrative policy existing before April 1, 1987, ALJ's had the authority to approve an attorney's fee request of $3,000 or less. Above that amount, fee requests had to be approved by SSA's regional office (i.e., by a regional ALJ). Beginning on April 1, 1987, and continuing to December 16, 1987, SSA lowered this authority limit to $1,500. (The $3,000 limit was reinstated in a memorandum dated December16, 1987, from the Associate Commissioner of SSA to all ALJ's and supervisory personnel).

An individual's retroactive social security award may be reduced to take account of certain SSI, worker's compensation, or other public disability benefits that the individual has received. This reduction may result in insufficient past-due amounts being available to SSA for direct payment of the fee due to the attorney.

House bill

The payment of attorney's fees for representation of social security clients is changed from a fee petition process to an automatic payment system. Attorneys generally will be paid 25 percent of any back benefits awarded to the claimant, up to a cap of $4,000 (indexed to reflect increases in the cost of living). In cases where no back payment is due because benefits were paid during the appellate process, the attorney will receive 25 percent, up to the $4,000 cap, of the amount paid to the recipient through the period of representation. In cases where no back payment is due nor any benefits paid during appeal, the attorney will receive 3 times either: (1) the claimant's primary insurance amount; or (2) if benefits are paid based on another person's earnings record, the monthly benefit amount; or if less, $4,000. In cases where no back payment is due, the fee will be paid to the attorney by SSA and will be repaid by the beneficiary through withholding of 10 percent of future monthly benefits. In each case, the ALJ, the attorney, or the claimant may protest the 25 percent amount as too low or too high.

If there is a back award, the full amount of the award must be paid in the form of a two-party check, and sent to the attorney for division with the claimant. The attorney and the claimant must complete a sworn affidavit attesting that the attorney has received the correct fee. The attorney must send the affidavit to SSA within 15 days. Otherwise the authorization of the attorney's fee shall be withdrawn and the attorney shall be prohibited from representing claimants before SSA until the affidavit is sent.

An individual's retroactive social security award may not be reduced to take account of certain SSI, worker's compensation or other public disability benefits to the extent that the reduction would result in insufficient past-due amounts being available to SSA for direct payment in full of the fee due to the attorney.

Effective date.—Effective for determinations favorable to the claimant made after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement: (1) rescinds the $1,500 rule, (2) prohibits the issuance or amendment of any rules concerning the payment of attorneys' fees until July 1, 1989, and (3) requires simultaneous studies by the Department of Health and Human Services (to be conducted by the Social Security Administration) and the General Accounting Office of the process by which attorneys' fees are authorized and paid.

The rescission of the $1,500 rule is to apply prospectively to fees given final authorization by SSA on or after the date of enactment of this bill. The reinstated $3,000 limit is thus intended to apply to all future fee authorizations made by SSA including those in which, on or after the date of enactment of this bill, (1) benefits have been approved but a fee petition has not yet been submitted, (2) a petition in excess of $1,500 is pending before an ALJ or a regional chief ALJ, and (3) a fee authorized by an ALJ has been appealed by an attorney.

The SSA study will assess levels of reimbursement to attorneys, taking into account the contingent nature of most agreements between beneficiaries and their legal representatives, and propose alternative methods for establishing fees which take into account the nature of these agreements. It will also recommend changes which simplify and streamline the fee payment process. The GAO study will access the impact of the fee payment process on both beneficiaries and attorneys. It will include at a minimum an identification of obstacles to the timely payment of attorneys' fees and an assessment of the effects, if any, of the $1,500 limit on access to legal representation by applicants for social security disability benefits. Both studies must be submitted to Congress by July 1, 1988.

14. TREATMENT OF CORPORATE DIRECTORS AS EMPLOYEES FOR FICA TAX PURPOSES

(Section 9022 of the House bill)

Present law

Income from wages or self employment causes a reduction in social security benefits for recipients under age 70, if the income exceeds certain exempt amounts. Income from self employment for work performed after a person becomes entitled to social security benefits is counted in the year it is received. The wages of an employee, on the other hand, are counted in the year they are earned, regardless of when they are received.

Because corporate directors' earnings are treated as self-employment income, a director is able to avoid benefit reductions from the earnings test by deferring receipt of them until reaching 70. Since the earnings test does not apply to recipients age 70 and older, the deferred directorship earnings do not cause a reduction in benefits. In addition, since the earnings are deferred, the payment of SECA taxes is delayed; and the corporation is not responsible for either payment or withholding of FICA taxes on any remuneration to such individuals.

House bill

The provision amends the Social Security Act to treat directors of corporations as employees solely for purposes of the FICA tax and social security earnings test. This change is intended to be narrowly construed, and is not to be applied for other purposes.

Effective date.—This proposal is effective for remuneration paid on or after January 1, 1988.

Senate amendment

No provision.

Conference agreement

The conference agreement treats corporate directors' earnings as received when services are performed, regardless of when actually paid, for purposes of both the SECA tax and the earnings test.

15. APPLICATION OF EARNINGS TEST IN YEAR OF INDIVIDUAL'S DEATH

(Section 9023 of the House bill)

Present law

A Social Security beneficiary under age 70 with earnings in excess of certain thresholds is subject to a $1 reduction in benefits for every $2 earned over this exempt amount.

The annual exempt amount under the earnings test is lower for beneficiaries under age 65 than it is for beneficiaries ages 65–69. This year the under age 65 exempt amount is $6,000 and the age 65–69 exempt amount is $8,160. Thus, beneficiaries under age 65 begin to lose benefits at a lower earnings level than beneficiaries ages 65–69. If a beneficiary dies, the annual exempt amount applicable to his or her age group at time of death is prorated based on

the number of months that he or she lived during the year. Thus, if a 63 year old individual dies in October, the annual exempt amount is $5,000 (10/12 of the full year $6,000 exempt amount). In addition, the higher exempt amount is applicable in the year a beneficiary reaches age 65 regardless of when during the year the beneficiary turns 65. However, if a beneficiary dies at age 64 in the year that he or she would have turned 65, the lower exempt amount applies. If the beneficiary dies after his or her 65th birthday but still in the same year, the higher exempt amount applies.

House bill

The annual exempt amount is not prorated in the year of death. In addition, the higher annual exempt amount for recipients age 65–69 applies to people who die before they reach 65 in the year that they otherwise would have attained age 65.

Effective date.—Effective with respect to deaths after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

16. DENIAL OF BENEFITS TO INDIVIDUALS DEPORTED OR ORDERED DEPORTED ON THE BASIS OF ASSOCIATION WITH THE NAZI GOVERNMENT OF GERMANY DURING WORLD WAR II

(Section 9024 of the House bill)

Present law

People who are deported for violating specified provisions of the Immigration and Nationality Act lose their social security benefits. However, the list of provisions does not include paragraph 19. Paragraph 19, which was added to the Immigration and Nationality Act in 1978, pertains to people who are deported for certain activities in association with the Nazi government of Germany during World War II.

House bill

Benefits to individuals who are deported as Nazi war criminals under paragraph 19 of the Immigration and Nationality Act are terminated.

Effective date.—Applies only in the case of deportations occurring, and final orders of deportation issued, on or after the date of enactment, and only with respect to benefits beginning on or after such date.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

17. MODIFICATIONS IN THE TERM OF OFFICE OF PUBLIC MEMBERS OF THE BOARDS OF TRUSTEES

(Section 9025 of the House Bill)

Present law

The Boards of Trustees of the social security trust funds are composed of the Secretaries of the Treasury, Labor, Health and Human Services, and two members of the public. The members of the public are nominated by the President and confirmed by the Senate. The law specifies that their term of service is for four years, but is otherwise silent on the length of term for a public member appointed to fill a vacancy left by another public member who leaves before the end of his or her term, or on whether a public member is permitted to serve after the expiration of his or her term until a successor has taken office.

House bill

A public member appointed to fill a vacancy occurring before the end of a term shall serve only for the remainder of such term. Also a public member may serve after the expiration of his or her term until a successor has taken office.

Effective date.—Upon enactment.

Senate amendment

No provision.

Conference agreement

The Conference agreement does not include the House provision.

18. RAILROAD RETIREMENT TAX PROVISIONS

(Sections 9031–9033 of the House Bill and Sections 6582–6585 of the Senate Bill)

Present law

The Railroad Retirement Program consists of a Tier I benefit structure which is generally equivalent in benefits and financing to the social security program and a separately financed Tier II benefit structure. Under present law, the Tier II program is financed primarily by a payroll tax of 14.75 percent for employers and 4.25 percent for employees. This tax is applied to wages up to $33,800 in 1988. (This limitation on the amount of wages is increased annually by the increase in average annual wages in the general economy.)

Tier II benefits are includible in income for tax purposes in the same manner as benefits received under a qualified pension plan. The 1983 Railroad Retirement Solvency Act provides for the transfer to the Railroad Retirement Account of an amount equal to the income received from the taxation of Tier II benefits. This transfer to the Railroad Retirement Account is limited to an aggregate total of $877 million, and applies only to the taxation of benefits which are received prior to October 1, 1988.

House bill

(a) *Railroad retirement tax.*—The provision increases the employer Tier II tax by 1.35 percent to 16.1 percent. The employee rate is increased by 0.65 percent to 4.9 percent.

(b) *Commission on Railroad Retirement Reform.*—The provision establishes a seven-member Commission on Railroad Retirement Reform to perform a comprehensive study of alternative methods of financing the railroad retirement system. The study would look at the possibility of changes in the tax rate or base, the imposition of a tax on operating revenues, changes in investment policy, and the establishment of a private pension plan. In completing its study, the Commission would make findings relating to the economic outlook for the rail industry, and the nature of the relationships between the railroad retirement system, levels of rail employment and compensation, and the performance of the rail sector. The Commission would submit its report and recommendations to Congress by October 1, 1989.

(c) *Extension of transfer to the Railroad Retirement Account of Tier II taxes.*—No provision.

Effective date.—The railroad retirement tax increase is effective January 1, 1988.

Senate amendment

(a) *Railroad retirement tax.*—Same as House provision.

(b) *Commission on Railroad Retirement Reform.*—Same as House bill, except that provision establishes an eight-member commission.

(c) *Extension of transfer to the Railroad Retirement Account of Tier II taxes.*—The provision eliminates the $877 million limit on the amount of general funds that are transferred to the Railroad Retirement Account on the basis of income taxes on Tier II benefits. It also provides that such transfers will be made for two additional years based on Tier II benefits paid prior to October 1, 1990.

Effective date.—The railroad retirement tax increase is effective January 1, 1988.

Conference agreement

(a) *Railroad retirement tax.*—The conference agreed to the House bill and the Senate amendment.

(b) *Commission on Railroad Retirement Reform.*—The conference agreement follows the House bill with modifications. The President would appoint four members of the Commission, one of whom would represent rail labor, one of whom would represent rail management, one of whom would represent commuter railroads, and one of whom would represent the general public. The President pro tempore of the Senate and the Speaker of the House of Representatives would each appoint one public member. The Comptroller-General of the United States would appoint one public member with expertise in the fields of retirement systems or pension plans.

The conference agreement provides for the appointment of a total of four individuals from among members of the public. The conferees believe that these individuals should be selected on the basis of their ability to represent the public interest, as well as the

interests of the employers, employees, and retirees who are immediately affected by the system. These appointees should include individuals who have specific knowledge of the issues involved in establishing and maintaining an actuarially sound retirement system. They should also include individuals who have an understanding of the history of and the outlook for the railroad industry. The conferees anticipate that those who have the responsibility of appointing members of the Commission will make every attempt to assure that the Commission will be balanced in its composition so that all interests will be fairly represented.

The Conferees expect that the Speaker of the House of Representatives and the President pro tempore of the Senate will consult with the Chairmen of the appropriate committees before making their appointments to the Commission.

It is the intention of the Conferees that the study will focus primarily on financing issues. In addition, the study will also consider the ability of the system under current law to pay benefits to current and future beneficiaries and the financial relationship of the system to the railroad unemployment insurance system, the social security system, and the general fund. The Conferees do not intend however, that the study make recommendations which will require the use of additional general revenues to finance the system.

It is the intention of the Conferees that the Commission consider the matter of benefits for divorced spouses of retired railroad workers. They note that under present law, divorced spouses of railroad workers do not have the same coverage they would have under social security.

The agreement provides that the members of the Commission will serve without compensation, but will be reimbursed for expenses. They will elect their own Chairman from among themselves.

The agreement authorizes $1 million to fund the Commission.

(c) *Extension of transfer to the Railroad Retirement Account of Tier II taxes.*—The agreement follows the Senate amendment except the transfer of revenue would continue for one year only, until October 1, 1989.

Aid To Families With Dependent Children

A. FRAUD CONTROL UNDER AFDC PROGRAM

(Section 9202 of House bill)

Present law

States are reimbursed with 50 percent Federal funds for the proper and efficient administration of the AFDC program. This includes the cost of any pre-prosecutorial fraud control activities.

House bill

The House bill authorizes 75 percent Federal funding for costs of a State's fraud control program. In addition, it would disqualify from eligibility recipients found to have intentionally violated the program as follows: for first offense, six months; second offense, 12 months; third offense, permanently.

The determination of intentional violation would be based on proof of intentionally (a) making a false or misleading statement; (b) misrepresenting, concealing, or withholding facts; or (c) committing any act that violates the AFDC program, the State's AFDC plan or any Federal or State law or regulation relating to AFDC. The determination could be made either through an administrative hearing or by a court. The State agency could combine hearings for alleged violations in the AFDC and food stamp programs when factual issues arise from the same or related circumstances.

Effective date.—October 1, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with several modifications. First, statutory language is added to clarify that matching funds are available for cases in which an individual pleads guilty or nolo-contendere, as well as for cases requiring prosecution. Second, States would be required to provide written notice at application of the penalties for fraud under the AFDC program. Third, the purposes for which Federal matching funds may be used are clarified. Funds may be used for costs relating to the investigation, prosecution, administrative hearing and collection of fraudulent cases. Fourth, language has been added to clarify that the fraud control provision applies to intentional actions to obtain or increase benefit amounts. The types of activities to be covered are expected to parallel those covered under the food stamp program. Similarly, the procedures used to carry out the AFDC fraud control program, including the hearings process, are expected to parallel those currently in use under the food stamp program.

B. ASSISTANCE TO HOMELESS FAMILIES. (SECTION 9219 OF HOUSE BILL; SECTION 4121 OF SENATE AMENDMENT)

Present law

(a) States may operate an emergency assistance program for needy families with children (whether or not eligible for AFDC) if the assistance is necessary in order to avoid the destitution of the child or to provide living arrangements in a home for the child. The statute authorizes 50 percent Federal matching for emergency assistance furnished for a period not in excess of 30 days in any 12-month period. Regulations state that Federal matching is available for emergency assistance authorized by the State during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet needs which arose before the 30-day period or are for such needs as rent which extend beyond the 30-day period.

(b) AFDC regulations allow States to include in their State standards of need provision for meeting "special needs" of AFDC applicants and recipients. The State plan must specify the circumstances under which payments will be made for special needs.

(c) No provision.

House bill

(a) The Secretary of HHS would be prohibited from taking any action to prevent a State, prior to October 1, 1988, from furnishing emergency assistance without durational limitation during any period of 12 consecutive months, if such assistance is authorized by the State during a single period of 30 consecutive days in such 12-month period, including assistance to meet needs which arose before the 30-day period or needs such as rent which extend beyond the 30-day period.

(b) The Secretary of HHS would also be prohibited from taking any action to prevent a State, prior to October 1, 1988, from including in its standard of need, (either as a basic or a special need) an amount for shelter and related needs that varies according to geographic location, family circumstance, or the type of living accommodation occupied.

(c) A demonstration program would be authorized under which any State that provides for temporary shelter as a special need could submit an application to conduct a demonstration for the purpose of encouraging landlords to make permanent dwelling units available to needy families that otherwise require emergency assistance under title IV-A of the Social Security Act in the form of commercial or similar transient accommodations, and of testing a method of minimizing or eliminating the need for emergency assistance in the form of commercial or similar transient accommodations.

A demonstration would provide for the payment of rent (under lease with owners of permanent dwellings): for the first 12 months of the lease, at the rate payable for comparable commercial or transient accommodations under the emergency assistance program; and, for the remainder of the lease, at the applicable AFDC housing allowance. No lease could be entered into after September 30, 1989. Notwithstanding any provision of AFDC law or regulation, the full amount of rent payable for the first 12 months of a lease would be matched at the State's AFDC matching rate.

The Secretary would be authorized to approve an application if it appears likely that the proposed project will contribute significantly to the purpose of the demonstration.

Effective date.—Prohibitions on Secretarial action would be effective October 15, 1987. Demonstration authority would be effective November 20, 1987.

Senate amendment

(a) No provision.

(b) The Secretary of HHS would be prohibited from taking any action, prior to October 1, 1988, from including in its standard of need (as a special need for individuals who would otherwise be homeless) an amount for shelter and related needs that varies according to geographic location, family circumstance, or the type of living accomodation occupied.

(c) No provision.

Effective date.—The prohibition on Secretarial action would be effective December 1, 1987.

Conference agreement

The conference agreement is a substitute for the House and Senate provisions. It prohibits the Secretary of Health and Human Services, prior to October 1, 1988, from taking any action that would have the effect of implementing, in whole or in part, the proposed regulation published in the *Federal Register* on December 14, 1987 with respect to emergency assistance and need and amount of assistance under the program of Aid to Families with Dependent Children, and from taking any other action that would change current policy with respect to the matters addressed in the proposed regulation published on that date.

The conferees note that the tragic problem of widespread homelessness of families with children is a relatively new phenomenon in this Nation, and governments at all levels are experiencing difficulty in dealing with it. The Committee on Ways and Means and the Committee on Finance intend to hold hearings in the coming year on whether and how the current AFDC statute should be amended to respond to the problem of homeless families. The conferees emphasize that while this issue is being considered by the Committees, they expect the Administration to maintain current policies with respect to State reimbursement for costs incurred in serving the homeless under the AFDC program.

C. WASHINGTON STATE DEMONSTRATION PROGRAM

(Section 4115 of Senate amendment)

Present law

The State of Washington has passed legislation to undertake a five-year demonstration program, the Family Independence Program (FIP), as an alternative to the present Aid to Families with Dependent Children program. The legislation directs the Governor to enter into agreements with the Federal government to allow the State to proceed with the program. The Governor must submit those agreements and an implementation plan to the legislature by no later than February 7, 1988. The demonstration cannot proceed without Federal authorizing legislation.

House bill

No provision. (A similar provision is contained in H.R. 1720.)

Senate amendment

The Senate amendment would allow the State of Washington to conduct a demonstration of its proposed Family Independence Program. The demonstration would emphasize education, employment and training services. The State would be required to provide assurances satisfactory to the Secretary that the total amount of Federal reimbursement over the period of the project will not exceed the anticipated Federal reimbursement under the AFDC and Medicaid programs (including reimbursement for additional persons who would qualify for AFDC, and for costs attributable to increases in the State's payment standard).

Every individual eligible for aid under the State AFDC plan would be eligible to enroll in FIP, which would operate simulta-

neously with the AFDC program so long as there are individuals who qualify for the latter. No family could receive less in cash benefits than it would have received under the AFDC program. Participation in work or training would be voluntary during the first two years of the program, and could thereafter by made mandatory only in counties where more than 50 percent of the enrollees can be placed in employment within three months after they are job ready.

Effective date.—Upon enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective upon enactment.

D. NEW YORK STATE DEMONSTRATION PROJECT.

(Section 4114 of Senate amendment)

Present law

No provision.

House bill

No provision. (Identical provision included in H.R. 1720.)

Senate amendment

The Senate amendment would allow the State of New York to test a child support supplement demonstration program as an alternative to the present Aid to Families with Dependent Children (AFDC) program. The Federal government would pay to the State with respect to families receiving assistance under the demonstration program the same amounts as would be payable with respect to the families as if they were receiving cash and medical assistance under the regular AFDC and Medicaid programs.

The State would be required to provide assurances to the Secretary that the State will continue to make assistance available to all eligible children in the State who are in need of financial support, and will continue to operate an effective child support program. The State must also agree to have the program evaluated, and to report interim findings to the Secretary at such times as the Secretary provides. In addition, the State must satisfy the Secretary that the program will be evaluated using a reasonable methodology that can determine whether changes in earnings are attributable to participation in the program.

The State would be required to submit its plan for the demonstration to the Secretary of Health and Human Services for his approval. Unless the Secretary or the Governor choose to terminate the project sooner, the demonstration would be conducted for a period not to exceed five years.

Effective date.—Upon enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective upon enactment.

II. Child Support Enforcement Amendments

A. CONTINUATION OF CHILD SUPPORT ENFORCEMENT SERVICES FOR FAMILIES NO LONGER RECEIVING AFDC

(Section 9231 of House bill)

Present law

State child support enforcement agencies are required to continue to collect child support payments on behalf of families that leave AFDC for a period of 3 months. After 3 months, if the State is authorized by the family to do so, it must continue to collect support without requiring the family to reapply as a non-AFDC case or to pay an application fee.

House bill

State child support enforcement agencies would be required to continue services for persons no longer eligible for AFDC on the same basis and under the same conditions as other non-AFDC families, except that no application (or application fee) for services could be required.

Effective Date.—Upon enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, effective upon enactment.

E. CHILD SUPPORT SERVICES FOR CERTAIN FAMILIES RECEIVING MEDICAID.

(Section 9232 of House bill)

Present law

State child support enforcement agencies are required to petition for inclusion of medical support in child support orders (when health insurance is available to the absent parent at a reasonable cost) on behalf of AFDC recipients, non-AFDC families requesting child support services, and certain foster care families. As a condition of eligibility, all Medicaid applicants and recipients must assign to the State their rights to support (specified as support for the purpose of medical care by court or administrative order) and to payment of medical care from any third party. States are not required to extend child support services to Medicaid families who do not also receive AFDC.

House bill

State child support enforcement agencies would be required to provide services to all families with an absent parent who receive Medicaid and have assigned to the State their rights to support, regardless of whether they are receiving AFDC.

Effective date.—Upon enactment.

Senate amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, effective July 1, 1988.

C. REPEAL OF CHILD SUPPORT REVOLVING FUND

(Section 4116 of Senate amendment)

Present Law

States may in specified circumstances request assistance from the Internal Revenue Service (IRS) in collecting child support obligations. When IRS makes a child support collection on behalf of a State, the monies collected must be deposited in a revolving fund. They are disbursed from the revolving fund to the State for further distribution as though the State had made the collection directly. Because of the existence of the fund, the monies flow through the Federal budget, although with no net budgetary impact, since income to the fund is offset by outgo from the fund. In the event of a sequestration under the Balanced Budget and Emergency Deficit Control Act, however, these monies would be subject to sequestration even though they are not Federal funds in any sense. Under the November 20th sequestration order, a total of $38,000 from this account is to be sequestered in fiscal year 1988.

House bill

No provision.

Senate amendment

The Senate amendment would replace the present revolving fund mechanism with a requirement that any amounts collected by IRS under this procedure be transferred to the State requesting the IRS assistance.

Effective date.—Upon enactment.

Conference Agreement

The conference agreement follows the Senate amendment, effective upon enactment.

III. C. Unemployment Compensation Amendments

A. RETROACTIVE CHANGE IN EFFECTIVE DATE OF CERTAIN EXTENDED BENEFIT REQUIREMENTS

(Section 9241 of House bill; Section 4120 of Senate amendment)

Present law

The Omnibus Reconciliation Act enacted in December 1980 gave States three months (to March 31, 1981) to enact laws requiring job search by individuals receiving extended unemployment benefits (which are partially funded out of the Federal unemployment tax). Sixteen States failed to enact legislation within the required time. The Inspector General of the Department of Labor has found them

out of compliance, and has determined that they should repay a total of $152 million to the Federal accounts in the trust fund.

House bill

The House bill would amend the 1980 Act retroactively to give States six additional months, until October 31, 1981, to come into compliance. States whose legislatures did not meet in 1981 are given until October 31, 1982, to come into compliance. The Congressional Budget Office considers the amendment to be budget neutral, because the $152 million would be shifted within accounts in the unemployment trust fund.

Effective date.—Upon enactment.

Senate amendment

The Senate amendment is the same as the House bill except that it provides for a compliance date of October 1, 1981 rather than October 31, 1981.

Conference agreement

The conference agreement follows the House bill.

B. SELF-EMPLOYMENT DEMONSTRATION PROGRAM

(Section 9242 of House bill; Section 4119 of Senate amendment)

Present law

Workers who become involuntarily unemployed are entitled to receive unemployment compensation benefits under State benefit programs. In general, benefits are available for up to 6 months of unemployment. To qualify for benefits, an individual must be able to work and must be available for work. If an individual attempts to set up his own business, he would be ineligible for further unemployment benefits since he would no longer be unemployed.

House bill

The House bill would authorize a demonstration project under which States would continue paying unemployment benefits to unemployed persons who attempt to set up their own businesses. A maximum of three 3-year demonstration projects would be authorized. In each State, the number of participants could not exceed the lesser of (1) 3 percent of the number of claimants receiving regular unemployment compensation at the start of the calendar year or (2) the number of individuals who exhausted unemployment benefits during the previous calendar year.

In order to participate in a self-employment project, a State would have to establish a project to assist claimants to set up businesses and would have to demonstrate that suitable conditions for creating new small businesses exist. States would have to establish the projects on a basis that would permit an estimate of the cost incurred or savings achieved. States would be required to guarantee that no net additional costs in any fiscal year would accrue to the unemployment program as a result of the projects. (State general revenues would have to be used to meet administrative costs

and to make up any losses to the unemployment compensation program.)

Effective date.—Upon enactment.

Senate amendment

Same as House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, effective upon enactment.

C. FUTA TAX EXTENSION

(Sections 9243-46 of House bill; Sections 4585-86 of Senate amendment)

Present law

The Federal Unemployment Tax Act (FUTA) imposes a gross employer tax of 6.2 percent on the first $7,000 paid annually to each employee. Employers in States with no overdue Federal loans are eligible for a full 5.4 percentage point credit, making the basic net FUTA tax rate 0.8 percent. The 0.8 percent tax rate has a permanent component of 0.6 and a temporary component of 0.2. The 0.2 percentage point surtax expires at the end of the year in which the Unemployment Trust Fund pays off an $8.7 billion debt incurred in the 1970s. Since this debt was repaid in May 1987, the 0.2 percentage point surtax is scheduled to expire at the end of 1987.

House bill

The 0.2 percentage point surtax is extended for 3 years. Half of the additional revenue collected during the extension flows into the Extended Unemployment Compensation Account and the other half goes into the Federal Unemployment Account.

In order to accumulate reserves in these accounts to help avoid future debt to the General Fund, the ceilings in these accounts are tripled from 0.125 percent to 0.375 percent of total covered wages.

If these accounts obtain new loans from the general fund, interest would be charged on the new loans. Currently, these loans are interest free. The interest rate is the same rate that is used to calculate interest on balances in the Unemployment Trust Fund. Interest payments by States on borrowing from the Federal Unemployment Account would be paid to that Account. Under present law, such interest is paid into the General Fund.

Effective date.—Wages paid on or after January 1, 1988.

Senate amendment

Same as House bill, except that the ceiling on the Federal Unemployment Account is increased from 0.125 percent to 0.625 percent of total covered wages and no provision is made for interest payments on loans from the General Fund.

Effective date.—Wages paid on or after January 1, 1988.

Conference agreement

The conference agreement follows the House bill except that it increases the ceiling on the Federal Unemployment Account to 0.625 percent of total covered wages as proposed in the Senate amendment.

IV. Supplemental Security Income (SSI)

A. PERMANENT EXTENSION OF DISREGARD OF CERTAIN IN-KIND ASSISTANCE

(Section 9201 of House bill; Section 4071 of Senate amendment)

Present law

In counting income for purposes of determining SSI benefits, the law requires exclusion of any support or maintenance assistance furnished to or on behalf of an individual that (as determined by the State) is based on need for such support or maintenance, including assistance received to help in meeting the costs of home energy (both heating and cooling), and that is (a) assistance furnished in-kind by a private nonprofit agency; or (b) assistance furnished by a supplier of home heating oil or gas, or by an entity providing home energy. States have the option to exclude this kind of assistance in determining AFDC benefits. This provision expired September 30, 1987.

House bill

The House bill would permanently extend the mandatory SSI disregard and the optional AFDC disregard of such in-kind assistance.

Effective date.—October 1, 1987.

Senate amendment

The Senate amendment is the same as the House bill except for a technical difference with respect to the effective date.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with an effective date of October 1, 1987.

B. EXCLUSION OF REAL PROPERTY WHEN IT CANNOT BE SOLD

(Section 9203 of House bill; Section 4069 of Senate amendment)

Present law

An individual may receive SSI benefits for a limited time even though he has property that, if counted, would make him ineligible. These benefits are conditioned upon the disposal of the property, and are subject to recovery as overpayments when the property is sold, or if the individual fails to dispose of them within the required time.

Regulations permit conditional payments for up to three months in the case of excess liquid resources that do not exceed $3,000 for an individual and $4,500 for a couple. In the case of real property,

regulations allow conditional payments for up to six months. There is no limit on the value of the real property which an individual can own and receive conditional payments.

SSI regulations also provide that property which no one has offered to buy within the conditional payment disposition period cannot be presumed to have zero market value and therefore not be counted as a resource. The regulations provide that the estimate of the property's market value remains operative unless the SSI recipient submits evidence which establishes a lower value.

House bill

The House bill would exclude from countable resources real property owned by an SSI recipient which cannot be sold because: (1) it is jointly owned (and its sale would cause undue hardship, including loss of housing, for the other owners); (2) its sale is barred by a legal impediment; or (3) the owner's reasonable efforts to sell it have been unsuccessful.

Effective date.—October 1, 1987.

Senate amendment

The Senate amendment would exclude (and does not require the sale of) real property for so long as it cannot be sold because: (1) it is jointly owned (and its sale would cause undue hardship due to loss of housing for the other owner or owners); (2) its sale is barred by a legal impediment; or (3) as determined by regulations issued by the Secretary, the owner's reasonable efforts to sell it have been unsuccessful.

Effective date.—The first day of the second calendar quarter to begin after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, with an effective date of April 1, 1988.

C. TRANSFER OF ASSETS FOR LESS THAN FAIR MARKET VALUE

(Section 9204 of House bill; Section 4067 of Senate amendment)

Present law

When an individual gives away or sells an asset at less than fair market value, the value of that asset is counted for 24 months after disposal in determining whether the individual meets the SSI resource requirements, provided it is determined that the transaction was for the purpose of establishing eligibility for SSI. The transaction is presumed to have been for the purpose of establishing SSI eligibility unless the individual furnishes convincing evidence that it was exclusively for some other purpose.

House bill

The House bill provides that the value of resources given away or sold for less than fair market value in the prior 24 months may not be counted toward the SSI resource limit until the cumulative uncompensated value of such resources exceeds $3,000. It would also require the Secretary to issue regulations for suspending the

transfer of assets rule in cases where he determines that the suspension is necessary to avoid undue hardship.

Effective date.—October 1, 1987.

Senate amendment

The Senate amendment would require the Secretary of HHS to issue regulations for suspending the transfer of assets rule where he determines that the suspension is necessary to avoid undue hardship.

Effective date.—The first day of the second calendar quarter to begin after the date of enactment.

Conference agreement

The conference agreement includes only the provision which allows the Secretary of Health and Human Services to waive the SSI transfer of assets policy in cases of undue hardship, effective April 1, 1988. The conferees believe that the SSI transfer of assets policy should be coordinated with the Medicaid transfer of assets policy and expect that the two will be coordinated in the catastrophic health care bill which will be in conference during the second session.

D. EXCLUSION OF INTEREST IN BURIAL ACCOUNTS

(Section 9205 of House bill; Section 4070 of Senate amendment)

Present law

In determining whether an individual's resources are within the SSI eligibility limits ($1,800 per individual in counted resources in 1987) there is excluded an amount of up to $1,500 that is placed in a separately identifiable burial account, if the inclusion of any portion of the amount in the account would cause the individual's resources to exceed the SSI resource limit. Any interest earned on the excluded account also is excluded. If the person's resources are so low that the amount in the burial account would not cause ineligibility, any interest earned is not excluded.

House bill

The House bill would require that any interest on designated burial accounts must be excluded in determining whether an individual meets the SSI resource requirements, regardless of the amount of the individual's other resources.

Effective date.—October 1, 1987.

Senate amendment

The Senate amendment is the same as the House bill except for a technical difference.

Effective date.—The first day of the second calendar quarter to begin after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective April 1, 1988. In addition, the conferees wish to clarify that the term "separately identifiable" as used in defining an excludable

burial fund means that the assets set aside as a burial fund must be kept separate from the individual's other assets and the fund must be specifically identified as to its purpose.

E. TREATMENT OF AFDC BENEFITS UNDER SSI RETROSPECTIVE ACCOUNTING

(Section 9206 of House bill; Section 4068 of Senate amendment)

Present law

When a recipient of Aid to Families with Dependent Children (AFDC) becomes eligible for SSI, his eligibility for AFDC is terminated. However, rules for determining the amount of an individual's SSI benefit require that the AFDC payment received in the month of application must be counted as income in determining SSI benefits for the first and second months after the month of application. This results in reduced SSI payments for those months, even though the individual's AFDC payments have actually been terminated.

House bill

The House bill would require that AFDC payments made by a State welfare agency be disregarded in determining SSI benefits.

Effective date.—October 1, 1987.

Senate amendment

The Senate amendment is the same as the House bill except for a technical difference.

Effective date.—The first day of the second calendar quarter to begin after the date of enactment.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with language clarifying that certain income will be counted only in the month it is received. This provision will apply to income received under title IV-A (AFDC), title IV-E (foster care), refugee cash assistance, Cuban/Haitian entrant assistance, or general and child welfare assistance provided by the Bureau of Indian Affairs. The provision is effective April 1, 1988.

F. TREATMENT OF CERTAIN COUPLES IN INSTITUTIONS

(Section 9207 of House Bill; Section 4074 of Senate Amendment)

Present law

States are allowed to treat a husband and wife who have shared a room in a Medicaid institution for a period of six months as a couple (rather than as two eligible individuals, as would otherwise be required under SSI rules) if doing so would prevent a reduction or termination of Medicaid benefits.

House bill

The House bill would expand this option to cover situations in which the husband and wife live in the same facility.

Effective date.—November 10, 1986.

Senate amendment

The Senate amendment is the same as the House bill.
Effective date.—Upon enactment.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, effective November 10, 1986.

G. EXTENSION OF DEADLINE FOR CERTAIN WIDOW(ER)S TO APPLY FOR MEDICAID

(Section 9208 of House bill; Section 4079 of Senate amendment)

Present law

The 1983 social security amendments increased benefits for disabled widows and widowers. Because this benefit increase had the effect of making some individuals ineligible for SSI and therefore for Medicaid, a provision was later enacted to deem them to be SSI recipients for purposes of Medicaid eligibility. The law provided a 15-month period (to July 1, 1987) during which affected individuals could file an application for Medicaid under this provision.

House bill

The House bill would extend the period during which these persons may file an application for Medicaid to July 1, 1988.
Effective date.—July 1, 1987.

Senate amendment

Same provision.
Effective date.—Upon enactment.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, effective July 1, 1987.

H. INCREASE IN SSI EMERGENCY ADVANCE PAYMENTS

(Section 9209 of House bill; Section 4066 of Senate amendment)

Present law

The Social Security Administration may make emergency advance payments of up to $100 to individuals who are presumptively eligible for SSI and who face a financial emergency.

House bill

The House bill would increase the allowable emergency advance payment to equal the maximum amount of the regular Federal SSI monthly benefit rate (currently $340 for an individual) plus, if any, the Federally-administered State supplementary payment.
Effective date.—October 1, 1987.

Senate amendment

Same provision.

Effective date.—The first day of the second calendar quarter to begin after the date of enactment.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, effective upon enactment.

I. EXTENSION OF INTERIM ASSISTANCE REIMBURSEMENT

(Section 9210 of House Bill; Section 4118 of Senate Amendment)

Present law

Upon written authorization by an individual, the Secretary of Health and Human Services may withhold SSI benefits due to that individual and pay a State from the benefits withheld an amount sufficient to reimburse the State for interim assistance furnished the individual. This method of reimbursing States for interim SSI assistance may be used only in the case of payments made to an applicant awaiting a determination of initial eligibility.

House bill

(a) The House bill would permit States to also receive reimbursement for interim assistance in cases where they have provided cash assistance to individuals whose SSI benefits were terminated or suspended, but who subsequently were found eligible for benefits.

(b) The House bill would also permit use of this mechanism to reimburse a State for interim assistance given to a recipient whose SSI check has been lost or stolen and not promptly replaced.

Effective date.—The provision would be effective the 13th month following the month of enactment, or if sooner, the first month for which the Secretary determines that it is administratively feasible.

Senate amendment

(a) Same as the House bill.

(b) No provision.

Effective date.—Same as House bill.

Conference agreement

The conference agreement follows the Senate amendment, effective the 13th month following the month of enactment, or, if sooner, the first month for which the Secretary determines that it is administratively feasible. Although the conferees have not agreed to the House provision authorizing use of the interim assistance mechanism with respect to lost or stolen checks, they expect the Social Security Administration to take steps to improve its procedures for responding to the needs of recipients who are facing emergency situations because their checks have been lost or stolen.

J. SPECIAL NOTICE TO BLIND RECIPIENTS

(Section 9211 of House bill; Section 4076 of Senate amendment)

Present law

No provision.

House bill

(a) The House bill would require the Social Security Administration to give blind SSI applicants or recipients the option: (1) to receive a supplementary notice regarding decisions or determinations about their rights under the SSI program, by telephone, within five days after the initial notice is mailed; or (2) to receive the initial notice in the form of a certified letter.

(b) The Secretary would also be required to take appropriate steps, no later than one year after enactment, to ensure that every individual already receiving SSI benefits on the basis of blindness is given an opportunity to make the election provided above.

(c) Finally, the House bill would require the Secretary to study the desirability and feasibility of extending special or supplementary notices to other persons who may lack the ability to read and comprehend regular written notices, and to make any appropriate recommendations within 6 months after enactment.

Effective date.—October 1, 1987.

Senate amendment

(a) The Senate amendment would require the Social Security Administration to give blind SSI applicants or recipients the option: (1) to receive a supplementary notice regarding decisions or determinations relating to their eligibility, by telephone, within five days after the initial notice is mailed; (2) to receive the initial notice in the form of a certified letter; or (3) to receive notification by some alternative procedure established by the Secretary of HHS and agreed to by the individual.

(b) Same as the House bill.

(c) The Senate amendment would require the Secretary to study the desirability and feasibility of extending special or supplementary notices to other persons who may lack the ability to read and comprehend regular written notices, and to make any appropriate recommendations within 12 months after enactment.

Effective date.—The first day of the second calendar quarter to begin after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective July 1, 1988. The conferees want to clarify that they expect the Social Security Administration to assure that individual recipients are adequately informed that they have the option of selecting whichever method of notification they prefer.

K. CONTINUED SSI BENEFITS FOR RECIPIENTS OF REHABILITATION SERVICES WHOSE BLINDNESS HAS CEASED

(Section 9212 of House bill; Section 4077 of Senate amendment)

Present law

Benefits to a disabled individual may not be terminated, even though the individual's impairment has ceased, if the individual is participating in an approved vocational rehabilitation program and the Commissioner of Social Security determines that the completion or continuation of the program will increase the likelihood

that the individual may be permanently removed from the disability rolls. There is no similar provision with respect to SSI recipients who are blind.

House bill

The House bill would continue SSI benefits to individuals whose blindness has ceased if they are participating in an approved vocational rehabilitation program, under the same conditions as apply to the disabled.

Effective date.—October 1, 1987.

Senate amendment

Same as House bill.

Effective date.—The first day of the second calendar quarter to begin after the date of enactment.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, effective April 1, 1988.

L. SSI ELIGIBILITY FOR INDIVIDUALS IN PUBLIC EMERGENCY SHELTERS

(Section 9213 of House bill; Section 4075 of Senate amendment)

Present law

Individuals in a public institution generally are not eligible for SSI. However, SSI benefits are paid for a period of up to three months out of a 12-month period to an otherwise eligible individual who is living in a public emergency shelter for the homeless.

House bill

The House bill would extend to 12 consecutive months the maximum period during which SSI benefits may be paid to persons in public emergency shelters.

Effective date.—October 1, 1987.

Senate amendment

The Senate amendment would extend to 6 months out of 9 consecutive months the maximum period during which SSI benefits may be paid to persons in public emergency shelters.

Effective date.—The first day of the second calendar quarter beginning after the date of enactment.

Conference agreement

The conference agreement generally follows the Senate amendment in providing that an individual in an emergency public shelter may receive SSI for up to a total of 6 months in any period of 9 consecutive months beginning after December 1987. Thus, an individual may receive up to 6 months of SSI benefits while in a public emergency shelter during the period of January-September 1988, without regard to his status during months prior to January 1988.

M. EXCLUSION OF UNDERPAYMENTS FROM RESOURCES

(Section 9214 of House bill)

Present law

The SSI program disregards retroactive SSI or social security payments as a resource for 6 months.

House bill

The House bill provides that, for the 2-year period beginning January 1, 1987, retroactive SSI and social security payments received during the period must be disregarded as a resource for 12 months.

Effective date.—January 1, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement generally follows the House bill, but provides that retroactive payments received during the two-year period beginning October 1, 1987 will be disregarded as a resource for 9 months.

N. FULL BENEFITS FOR SSI RECIPIENTS TEMPORARILY IN INSTITUTIONS

(Section 9215 of House bill; Section 4073 of Senate amendment)

Present law

An SSI recipient's benefit is reduced to $25 for any month during all of which he is in a Medicaid institution. Individuals who are in public institutions that are not Medicaid institutions (public mental institutions, for example) are generally not eligible for SSI benefits.

Medicaid regulations give States the option to allow an individual who enters a Medicaid institution to retain, for six months only, more than $25 a month if the State determines that the excess above $25 is needed to maintain a home that he will return to after a temporary stay in the institution.

House bill

The House bill provides full SSI benefits, including State supplementary payments, for a person who enters a public institution or a Medicaid institution, if it is determined that the person's stay is not likely to exceed 3 months and he must continue to maintain a home to which he may return upon leaving the institution.

It would also require the Secretary to establish procedures for making necessary determinations and would authorize him to enter into agreements with State and local public and private agencies for making such determinations. The procedures and agreements would provide appropriate assistance to individuals who, because of their physical or mental condition, have limited ability to furnish the information needed to make the determinations.

Effective date.—July 1, 1988.

Senate amendment

The Senate amendment contains a similar provision. It would require that a physician certify that the individual's stay in the institution is not likely to exceed 3 months. Full benefits could be paid to an individual in a public institution only if the institution's primary purpose is the provision of medical or psychiatric care.

Effective date.—July 1, 1988.

Conference agreement

The conference agreement follows the Senate amendment, effective July 1, 1988.

The conferees recognize that it may frequently be difficult to make the determination that an individual's stay in an institution (or institutions) is likely not to exceed three months. It will require a physician to certify something that is anticipated, not something that has actually happened.

Because of the anticipatory nature of the provision, it is clear that SSI recipients may be able to take advantage of it only if they are informed of its existence. Therefore, the conferees direct the Social Security Administration to include in informational literature for applicants and recipients specific information about their possible eligibility for continuation of full benefits in case of temporary institutionalization. Recipients (or others acting on their behalf) will thus be aware of the need to acquire the necessary certification and to apply for continued full benefits in a timely way.

In developing the procedures to be used in administering this provision the conferees anticipate that the Secretary will examine the procedures used in States like Wisconsin that currently provide for "maintenance of the home" allowances for persons who are in temporary care in Medicaid institutions.

In addition, the conferees note that SSA will have authority under this provision to make arrangements with public or private agencies to assist in making the determinations required under this provision to the extent that it determines this will facilitate the administration of the provision.

Finally, the conferees direct SSA to evaluate the effects of this provision and to report its findings to the Congress within three years after enactment.

O. RETENTION OF MEDICAID FOR CERTAIN WIDOW(ER)S

(Section 9216 of House bill; Section 4078 of Senate amendment)

Present law

SSI law requires individuals to apply for all other benefits for which they may be eligible. Thus, at age 60, disabled widows or widowers who apply for or are receiving SSI, are required to apply for early aged widow or widower social security benefits, which are actuarially reduced. Where the resulting social security benefit is sufficient to end SSI eligibility, the disabled widow or widower may lose Medicaid coverage.

House bill

The House bill would require that an individual who would otherwise qualify for SSI on the basis of disability or blindness, but beginning at age 60 qualifies for social security early aged widow's or widower's benefits and loses eligibility for SSI, nevertheless, be deemed to be an SSI recipient for purposes of Medicaid eligibility. It would continue Medicaid eligibility until the individual becomes eligible for Medicare.

Effective date.—The provision would apply with respect to any individual without regard to whether the determination of his or her eligibility for SSI benefits occurred before, on, or after the date of enactment. However, no individual would be eligible for Medicaid by reason of this amendment before October 1, 1987.

Senate amendment

Same as House bill.

Effective date.—The Senate amendment is the same as the House bill, except that it provides that no individual would be eligible for Medicaid by reason of this amendment before the first day of the second calendar quarter beginning after the date of enactment.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, effective July 1, 1988. The conferees note that the Social Security Administration is not expected to individually identify all of those whose SSI benefits have been terminated in the past. SSA may instead provide a generalized notice to a category or class of Social Security beneficiaries which is likely to include those who may have been affected. The conferees do expect that widows or widowers who lose benefits in the future will receive individual notification of their continued eligibility for Medicaid.

P. DEMONSTRATION TO ASSIST HOMELESS INDIVIDUALS IN OBTAINING SSI

(Section 9217 of House bill; Section 4117 of Senate amendment)

Present law

SSI law requires the Secretary to make payments to eligible individuals who do not have a fixed address but does not authorize specific services and procedures for identifying potentially eligible homeless persons and helping them apply for benefits.

House bill

(a) The House bill would authorize $1.25 million for FY 1988, $2.5 million for FY 1989, and such sums as may be necessary thereafter for projects to demonstrate and test the feasibility of developing and using special procedures to ensure that all homeless individuals in shelters understand their rights to benefits under the SSI program and other programs under the Social Security Act, to provide them with all possible help in applying for benefits and obtaining necessary documentation, and ensuring that they receive the benefits to which they are entitled. It would permit up to 10 States to create SSI outreach team projects at a cost not to exceed $250,000 yearly per project.

(b) A demonstration State's SSI Outreach and Eligibility Team would consist of: a caseworker from the State adult social services agency (or from a local adult social services agency), who would be the team leader, and, if necessary, one other caseworker; a consultative medical examiner who is a physician/psychiatrist qualified to provide consultative examinations for the Disability Determination Service (DDS) of the State; a disability examiner from the State DDS; and a social security claims representative. The Secretary would enter into an agreement with the State providing that team members detailed from their agencies shall retain authority to make decisions and determinations that they would have within the agency.

(c) The team leader would be assigned the following duties: determining, before visiting the shelter, the names of persons there who are potentially eligible for SSI; arranging transportation and, if necessary, accompanying SSI disability applicants to necessary examinations outside the shelter; assisting as needed in interviews; tracking and monitoring decisions made on claims; and assisting as needed in obtaining additional eligibility-related information about applicants.

(d) The Secretary would be required to waive requirements, restrictions, and limits in SSI law or regulations, or in any other law or regulation, that could prevent or hinder the team from carrying out its functions.

Effective date.—October 1, 1987.

Senate amendment

(a) Same as House bill.

(b) No provision.

(c) No provision.

(d) The Secretary would be permitted to waive requirements, restrictions, and limits in SSI law, or in any other law or regulation, that could prevent or hinder operation of the demonstration program.

Effective date.—October 1, 1987.

Conference agreement

The conference agreement authorizes several types of demonstration projects designed to assist homeless individuals who may qualify for SSI. Under this authority, the Secretary of Health and Human Services would be authorized to approve demonstrations which: create cooperative approaches by the Federal, State and local governments; establish, where appropriate, multi-agency SSI outreach teams similar to those proposed in the House bill; test special efforts for identifying homeless individuals who are potentially eligible for SSI; provide assistance to the homeless in applying for benefits and developing evidence related to eligibility; provide special staff training; provide assistance to formerly homeless individuals to ensure their continuing compliance with SSI rules; provide services designed to help homeless individuals obtain permanent housing, nutrition and physical and mental health care; and such other demonstrations as the Secretary may approve.

The conferees do not intend for the Social Security Administration to develop a new disability determination process as a result of

this provision. Instead, the intent is to establish procedures and services, in cooperation with other public and private nonprofit organizations, which reduce the barriers facing homeless individuals eligible for SSI.

Q. SSI ELIGIBILITY REQUIREMENTS FOR CERTAIN ALIENS

(Section 9218 of House bill)

Present law

SSI law requires that the income and resources of an alien's sponsor be considered in determining the alien's eligibility, provided the sponsor signed an affidavit of support. A portion of the sponsor's income (after allowance is made for his own family needs) is deemed available for the alien's support for 3 years after entry into the United States. This provision does not apply to those who become blind or disabled after entry, to refugees, to those granted political asylum, or to aliens sponsored by an agency or organization. AFDC law has a similar provision; however, the AFDC program also restricts the eligibility of aliens sponsored by agencies for 3 years after entry.

House bill

The House bill would make ineligible for SSI for 3 years after entry an alien for whom an organization executed an affidavit of support or similar agreement unless the sponsoring organization has ceased to exist or has been determined by a bankruptcy court to be bankrupt.

Effective date.—Upon enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

R. INCREASE IN PERSONAL NEEDS ALLOWANCE

(Section 4065 of Senate amendment)

Present law

The amount payable to an SSI recipient for any month throughout which he is in a Medicaid institution is reduced to $25 for an individual and to $50 for an individual and spouse. These amounts are intended to cover the cost of personal needs, such as toiletries and other small items, that are not covered by Medicaid. These amounts have been in effect since the SSI program began in 1974.

Medicaid regulations require that States allow SSI recipients who are residents of Medicaid institutions to retain from their income no less than the $25 personal needs allowance benefit standard.

House bill

No provision.

Senate amendment

The Senate amendment would increase the personal needs allowance to $30 for an individual and to $60 for a couple. It would also require States that supplement the Federal benefit to pass through this increase in the Federal payment level to SSI recipients.

Effective date.—July 1, 1988.

Conference agreement

The conference agreement follows the Senate amendment, with an effective date of July 1, 1988.

S. EXCLUSION OF DEATH BENEFITS SPENT ON LAST ILLNESS AND BURIAL

(Section 4072 of Senate amendment)

Present law

SSI law specifies certain kinds of income that must be excluded in determining whether an individual's income is within SSI limits. These include proceeds of a life insurance policy to the extent they are used for purposes of the final illness and burial of the insured person, or $1,500, whichever is less.

House bill

No provision.

Senate amendment

The Senate amendment would exclude payments occasioned by the death of another person, to the extent that the payments do not exceed the amount spent for purposes of the deceased person's last illness and burial. It would also exclude gifts and inheritances to the extent they are used for a last illness or burial.

Effective date.—The first day of the second calendar quarter to begin after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective April 1, 1988.

V. Social Services, Child Welfare Services, and Other Provisions Relating to Children

A. EXTENSION OF AUTHORITY FOR VOLUNTARY FOSTER CARE PLACEMENTS

(Section 9221 of House bill; Section 4063 of Senate amendment)

Present law

Title IV-E of the Social Security Act authorizes Federal matching for maintenance payments made by States for AFDC-eligible children placed in foster care homes or institutions. Most placements are made under court order. However, since 1981 there has been temporary authority in the law allowing States to make payments for children placed in foster care on a voluntary basis. To use this authority, States must have in place certain foster care protections and procedures. This authority expired September 30, 1987.

House bill

The House bill would permanently extend the authority for Federal matching funds for voluntarily-placed foster care children.

Effective date.—October 1, 1987.

Senate amendment

The Senate amendment is the same as the House bill, except for a technical difference.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with the technical change in the Senate amendment, effective October 1, 1987.

B. EXTENSION OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS

(Section 9222 of House bill; Section 4062 of Senate amendment)

Present law

In any year that the Federal appropriation for child welfare services exceeds a specified statutory level, there is a mandatory ceiling on the amount each State may receive for foster care maintenance payments. Under this mandatory ceiling, States may, under certain conditions, transfer all unused foster care maintenance funds to their child welfare services program. In any year that the Federal appropriation is below the specified level, States may choose to operate under a voluntary ceiling. Under the voluntary ceiling, States may, under certain conditions, transfer part of their unused foster care maintenance funds to the child welfare services program. The foster care ceilings and transfer authority expired September 30, 1987.

House bill

The House bill would extend the foster care ceilings and transfer authority through September 30, 1989.

Effective date.—October 1, 1987.

Senate amendment

Same as House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, effective October 1, 1987.

C. MOTHER/INFANT FOSTER CARE

(Section 9223 of House bill; Section 4064 of Senate amendment)

Present law

When a minor who is in foster care has a child, the minor continues to be eligible for foster care maintenance payments, but the child is eligible only for regular AFDC benefits, which are generally lower.

House bill

The House bill would require that in cases where a child in foster care is the parent of a son or daughter who is in the same home or institution, the foster care maintenance payments for the child shall include amounts necessary to cover costs of items provided on behalf of the son or daughter.

It would also deem the infants to be title IV–E foster care children for purposes of Medicaid eligibility or for eligibility under the adoption assistance program.

Effective date.—October 1, 1987.

Senate amendment

Same as House bill.

Effective date.—The first day of the second calendar quarter to begin after the date of enactment.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, effective April 1, 1988.

D. INCREASE IN FUNDING FOR TITLE XX BLOCK GRANT

(Section 4061 of Senate amendment)

Present law

The Title XX block grant program provides entitlement funds to the States and certain outlying areas to provide social services aimed at five specified goals. States determine which services to provide in pursuing these goals. Funds are generally allocated on the basis of population. Effective in FY 1984, the ceiling on Title XX entitlement funds was set permanently at $2.7 billion.

House bill

No provision.

Senate amendment

The Senate amendment would increase the Title XX entitlement cap by $50 million to $2.750 billion for fiscal year 1988; the cap reverts to $2.7 billion in 1989.

Effective date.—October 1, 1987.

Conference agreement

The conference agreement follows the Senate amendment with an amendment requiring that the additional funds be used for additional services and not supplant existing State funds.

E. EXTENSION OF TITLE XX AND CHILD WELFARE SERVICES TO AMERICAN SAMOA

(Section 4061 of Senate amendment)

Present law

All States and outlying areas, with the exception of American Samoa, are eligible for Title XX social services funds. In addition,

the law provides Title IV-B funds for child welfare services to States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam, but not American Samoa.

House bill

No provision.

Senate amendment

The Senate amendment would make American Samoa eligible to participate in both the Title XX and child welfare services programs.

Effective date.—October 1, 1987.

Conference agreement

The conference agreement follows the Senate amendment, effective October 1, 1988.

F. NATIONAL COMMISSION ON CHILDREN

(Section 9703 of House bill; Section 4111 of Senate amendment)

Present law

No provision.

House bill

The House bill would establish a bipartisan National Commission on Children composed of 36 members: 12 persons representing organizations serving children, involved in activities on their behalf, or engaged in academic research about their problems and needs; 12 elected or appointed public officials involved in issues and programs relating to children, and 12 parents or representatives of parents or parents' organizations. It would direct the President, the Speaker of the House, and the President pro tempore of the Senate to each name 12 members, 4 in each category.

The Commission would hold public hearings throughout the country on how to safeguard and enhance the physical, mental, and emotional well-being of children and youth.

The Commission would make recommendations regarding five subjects: health of children, social and support services for children and their parents, education, income security, and tax policy.

The Commission would also seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all available resources, in a coordinated and comprehensive manner.

The Commission would be required to submit recommendations to the President and Congress by September 30, 1988.

Effective date.—Upon enactment.

Senate amendment

The Senate amendment is the same as the House bill except that it would charge the Commission with making recommendations regarding four subjects: health of children, social and support serv-

ices for children and their parents, education, and income security. Recommendations would be made in the context of the purposes of relevant Federal law.

Effective date.—Upon enactment.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment. It includes the House provision that directs the Commission to study and make recommendations with respect to tax policy (in addition to health, social and support services, education, and income security), and excludes the Senate provision that directs the Commission to address specified issues within the context of particular provisions of law. The conferees intend that the Commission take into account the work of other commissions and task forces addressing related issues. The Conferees also intend that in selecting members of the Commission, the Speaker of the House will consult with the Committee on Ways and Means, the Committee on Education and Labor and the Committee on Energy and Commerce and the President Pro Tempore of the Senate will consult with the Committee on Finance and the Committee on Labor and Human Resources.

G. BOARDER BABIES DEMONSTRATION PROJECTS

(Section 4112 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment would authorize $4 million yearly for three years to fund demonstration projects to provide residential care for newborn babies whose parents abandon them to the care of hospitals.

Demonstrations could include: (1) projects in which infants remain with a parent in a residential setting, where appropriate care for the infant and suitable treatment for the parent may be assured; (2) projects that assure appropriate individualized care for such infants in a foster home or other nonmedical residential setting; (3) such other projects as the Secretary of Health and Human Services determines will best serve the interests of such infants and will serve as models for projects in other communities.

The Secretary would be required to give priority among applicants for funds to those projects that serve areas most in need of alternative care arrangements for boarder babies, provide for adequate evaluation, and meet such other criteria as he prescribes. Grants could be used to pay costs of maintenance and necessary medical and social services and for such other purposes as the Secretary may allow.

Effective date.—October 1, 1987.

Conference agreement

The conference agreement generally follows the Senate amendment, effective October 1, 1987, with the following modifications: language is added to clarify that infants in non-medical residential settings are to be subject to foster care case planning and case review requirements comparable to those in section 475 of the Social Security Act; the demonstration's purpose is expanded to include projects which are designed to recruit, train, and support foster parents and other professionals working with these infants; and additional application requirements for potential demonstration grantees are established.

The demonstration projects approved by the conferees will provide residential care for newborn babies whose parents abandon them to the care of hospitals. These "boarder babies" are frequently the offspring of drug addicts. They are generally healthy and do not require hospitalization, but cities such as New York have found it difficult to arrange alternative care. The conferees understand that the "boarder baby" problem is likely to grow and become even more intractable in the coming years, and new approaches to resolving this problem, as well as new resources, may well be needed. This will be an issue for future Congressional consideration.

H. STUDY OF CHILDREN WITH AIDS IN FOSTER CARE

(Section 4113 of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment would authorize a study to determine the number of infants and children in the United States who have acquired immune deficiency syndrome and who have been placed in foster care; the problems encountered by social services agencies in placing such infants and children; and the potential growth in the number of such children who will require foster care over the next five years. The Secretary of Health and Human Services and the Comptroller General of the General Accounting Office would conduct the study and make recommendations for improving care of AIDS infants and children who lack ongoing parental involvement and support. The Secretary and the Comptroller General could not duplicate activities of the Centers for Disease Control. Recommendations would be made within one year after enactment.

Effective date.—Upon enactment.

Conference agreement

The conference agreement follows the Senate amendment with an amendment requiring that the study be conducted by only one agency, the Department of Health and Human Services.

C.—Vaccine Injury Compensation

EXCISE TAX TO FUND THE VACCINE INJURY COMPENSATION TRUST FUND

Present Law

The National Vaccine Injury Compensation Program provides a no-fault Federal insurance system to compensate individuals who are injured or die due to the administration of certain prescribed vaccines (diptheria, pertussis, and tetanus (DPT), measles, mumps, and rubella (MMR), and polio).

When the compensation program is effective, all vaccine-related damage claims must first be determined by U.S. District Courts under the program. Awards for the new compensation program are paid over the life of the injured party, instead of lump-sum. The awards cover unreimbursed medical expenses, lost wages, attorney's fees, pain and suffering, and a death benefit.

Compensation awards under the program are authorized for injuries with respect to vaccines administered "after the effective date of a tax enacted" to fund the program.

House bill

The House bill imposes a per-dose excise tax on the sale of commonly prescribed vaccines at a rate of $4.56 on DPT, $4.44 on MMR, $0.29 on polio, and $0.06 on diptheria-tetanus. An amount equivalent to the net revenue raised by this tax is to be deposited in a new Vaccine Injury Compensation Trust Fund, which is to be used to compensate injuries from vaccines administered after September 30, 1987, and before the termination of the program. The net revenue is the gross revenue raised by the excise tax reduced by an amount (25% of gross revenue) to account for the reduction in income tax receipts due to the deductibility of the excise tax from taxable income.

New restrictions are placed on the eligibility for compensation. Types and amounts of awards are restricted. The awards must be made in a lump-sum fashion. The program will terminate if the number of awards made in specified time periods exceeds certain prescribed limits.

The excise tax becomes effective for vaccines sold after December 31, 1987. If the Trust Fund is found not to have a negative balance, the tax will terminate on January 1, 1993. Likewise, if the compensation program terminates early through the provision relating to the maximum permitted number of awards, the tax will terminate when and if there is not a negative balance in the Trust Fund.

The corresponding compensation program becomes effective October 1, 1988, and remains in effect until September 30, 1992, unless terminated earlier by the described procedure.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

D.—PBGC and Pension Funding

1. MODIFY FULL FUNDING LIMITATION

Present law

In general

Under present law, subject to certain limitations, an employer may make deductible contributions to a qualified defined benefit pension plan up to the full funding limitation (sec. 404). The full funding limitation generally is defined as the excess, if any, of (1) the accrued liability (including normal cost) under the plan, over (2) the lesser of (a) the fair market value of the plan's assets, or (b) the value of the plan's assets determined under section 412(c)(2) (sec. 412(c)(7)). Generally, the accrued liability is based on projected benefits, which, unlike accrued benefits, are the benefits that are projected to be earned by normal retirement age, rather than the benefits accrued as of the close of the current year.

If a defined benefit plan is terminated, the employer's liability to plan participants does not exceed the plan's termination liability (generally, the liability for benefits determined under sec. 401(a)(2) as of the date of the plan termination). However, contributions to a plan with assets in excess of termination liability (even, in some cases, with assets significantly in excess of termination liability) may be deductible because the full funding limitation is determined on the basis of projected benefits.

Interest rate and actuarial assumptions

Under present law, the actuarial assumptions used to determine costs, liabilities, interest rates, and other factors under a plan are required to be reasonable in the aggregate.

Asset valuation

Under present law (sec. 412(c)(2)(A)), the value of plan assets generally is to be determined in accordance with any reasonable actuarial method of valuation that takes into account fair market value and that is permitted under Treasury regulations. Treasury regulations provide that, regardless of the valuation method used, the method is required to result in a value that is between 80 percent and 120 percent of fair market value or between 85 percent and 115 percent of the average value over a period not exceeding the 5 most recent plan years (Treas. reg. sec. 1.412(c)(2)–1(b)(6)).

In addition, under section 412(c)(2)(B), the value of a bond or other evidence of indebtedness that is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date.

House bill

In general

Under the House bill, the full funding limitation generally is defined to mean the excess, if any, of (1) the lesser of (a) the accrued liability (including normal cost) under the plan, or (b) 150 percent of termination liability, over (2) the lesser of (a) the fair market

value of the plan's assets, or (b) the value of the plan's assets determined under section 412(c)(2).

Interest rate

The House bill provides a special limitation on the interest rate used for funding purposes (including the full funding limitation). Under the bill, the interest rate is required to be within a permissible range, which is defined as a rate of interest that is not more than 20 percent above or below the average long-term applicable Federal rate (AFR) for the 5-year period ending on the last day before the beginning of the plan year for which the interest rate is being used.

If any interest rate used under the plan is not within the permissible range, then the plan generally is required to establish a new interest rate that is within the permissible range. However, the Secretary may permit a plan to use an interest rate that is not within the permissible range if it is established, to the satisfaction of the Secretary, that the interest rate is reasonable. Further, if the Secretary determines that any interest rate used under the plan is not reasonable (without regard to whether the rate is within the permissible range), then the plan is required to establish a new interest rate that is permitted by the Secretary.

Asset valuation

The House bill provides that, effective with respect to plan years beginning after December 31, 1987, the regulations under section 412(c)(2) permitting asset valuations to be based on a range of other than fair market value are to have no force and effect. In addition, the bill provides that the Secretary is to amend the regulations to carry out the intent of this provision.

Actuarial assumptions

The House bill modifies the standard for actuarial assumptions to require that all costs, liabilities, interest rates (subject to the special rule described above), and other factors are to be determined on the basis of actuarial assumptions and methods (1) each cf which is reasonable (taking into account the experience of the plan and reasonable expectations) or (2) which result, in the aggregate, in a total plan contribution equivalent to the contribution that would be obtained if each assumption were reasonable. Under the bill, as under present law, the costs, etc., are required to represent the plan actuary's best estimate of anticipated experience under the plan. It is intended that the taxpayer has the burden of demonstrating that each actuarial assumption is reasonable and, if each actuarial assumption is not reasonable, that the assumptions in the aggregate result in a total contribution equivalent to the contribution that would be obtained if each assumption were reasonable.

Definition of termination liability

For purposes of the definition of the full funding limitation, the term "termination liability" means the value of all liabilities to employees and their beneficiaries under the plan. For purposes of determining termination liability under this rule, liability for any

benefit contingent on (1) a facility shutdown, (2) a reduction or contraction in workforce, or (3) any event that cannot reliably and reasonably be predicted (as determined under regulations) is not to be taken into account until such shutdown, reduction or contraction, or other event occurs.

It is not intended that an event will be considered reliably and reasonably predictable solely because an actuarial probability of the event occurring may be determined. It is further intended that the Secretary will prescribe regulations defining events that can and cannot be reasonably and reliably predicted and will revise these regulations as new benefits are developed.

The third category of contingent benefits is intended to include contingencies that, like facility shutdowns or reductions or contractions in workforce, are not reliably and reasonably predictable. This category is not limited to events that are similar to shutdowns or reductions in force. An example of a benefit that is included in the third category is a benefit dependent upon the profits of the employer or the value of employer stock dropping below a certain level.

On the other hand, if an employer provides an early retirement window benefit under which employees who have satisfied certain age or service requirements or both are offered a limited period of time during which they may elect to retire, such a window benefit is not necessarily considered to be contingent on an event that cannot be reasonably and reliably predicted.

Effect on other funding rules

The bill does not modify the definition of accrued liability in section 412(c)(7). Also, the requirement that all amortizable amounts be considered fully amortized (sec. 412(c)(6)(B)) is applied without regard to the change in the full funding limitation (adding the 150 percent of termination liability limitation).

Multiple plans

It is intended that the full funding limitation (as well as the other limitations on deductions for plan contributions) may not be avoided by the creation of multiple plans with coordination of benefits between the plans. The Secretary is to prescribe rules consistent with this intent.

Regulatory authority

The Secretary may, under regulations, adjust the 150-percent figure in the full funding limitation to take into account the average age (and length of service, if appropriate) of the participants in the plan (weighted by the value of their benefits under the plan). Any such adjustments are to be prescribed only if, in the aggregate, their effect on Federal budget receipts is substantially identical to the effect of this provision of the bill. For example, the Secretary could, if it satisfies the budget receipts requirement, adjust the 150-percent figure to 175 percent for younger workforces and to 125 percent for older workforces.

Effective date.—This provision is effective for years beginning after December 31, 1987.

Senate amendment

The Senate amendment generally follows the House bill, with the following exceptions.

Interest rate

The Senate amendment uses the term "current liability" instead of the term "termination liability" as under the House bill, but the substance of the two terms is the same. For purposes of calculating current liability under the amendment, the interest rate is the rate used for calculating costs under the plan. If such rate is not within the permissible range, however, then for this purpose the plan is required to establish a new interest rate that is within the permissible range. The permissible range is defined as a rate of interest that is not more than 20 percent above or below the average mid-term applicable Federal rate (AFR) for the 3-year period ending on the last day before the beginning of the plan year for which the interest rate is being used (or, if shorter, the period that the AFR has been computed). The average is determined by averaging the rate in effect for each month during the applicable 3-year period. The Secretary may prescribe one or more indices in lieu of the average mid-term AFR to be used in determining the permissible range.

Asset valuation

The amendment provides that, effective with respect to plan years beginning after December 31, 1987, the portions of the regulations permitting asset valuations to be based on a range between 85 percent and 115 percent of average value are to have no force and effect. In addition, the amendment provides that the Secretary is to amend the regulations to carry out the intent of this provision.

Regulatory authority

The Secretary is not authorized to adjust the 150-percent figure in the full funding limitation.

Conference agreement

The conference agreement follows the House bill (using the term "current liability" rather than "termination liability"), with certain modifications.

Interest rate

The conference agreement follows the rule under the Senate amendment with respect to the interest rate to be used in determining current liability, with certain modifications. Under the conference agreement, for this purpose, the interest rate is generally the rate determined under the plan's assumptions. However, notwithstanding the plan's assumptions, the interest rate is required to be within 10 percent of the average rate for 30-year Treasury bonds for the 4-year period ending on the last day before the beginning of the plan year for which the interest rate is being used. This creates a permissible range of between 90 percent and 110 percent of such average rate. Under appropriate circumstances, the Secre-

tary may also permit interest rates that are between 80 percent and 90 percent of the average rate described above. For purposes of determining the average rate for the 4-year period, the Secretary may prescribe rules weighting the more recent years more heavily.

No rate outside of the specified corridor is permitted under any circumstances. Also, the specified corridor is not intended to be a safe harbor with respect to whether an interest rate is reasonable. The Secretary is authorized to adjust a rate within the corridor to the extent that it is unreasonable under the rules applicable to actuarial assumptions.

ASSET VALUATION

The conference agreement follows the Senate amendment with respect to the value of assets (sec. 412(c)(2)(A)). In addition, the conference agreement repeals section 412(c)(2)(B), thus subjecting bonds and other evidence of indebtedness to the general valuation rules. The Secretary may, however, prescribe regulations under which a dedicated bond portfolio may be valued by using the interest rate used to determine current liability.

These changes with respect to asset valuation do not apply to multiemployer plans.

Actuarial assumptions

For purposes of the modification of the full funding limitation for plans other than multiemployer plans, the conference agreement follows the House bill and Senate amendment with respect to the standard for actuarial assumptions subject to the requirement that the interest rate be within the corridor described above. In addition, the determination of whether an interest rate is reasonable depends on the cost of purchasing an annuity sufficient to satisfy current liability. The interest rate is to be a reasonable estimate of the interest rate used to determine the cost of such annuity, assuming that the cost only reflected the present value of the payments under the annuity (i.e., and did not reflect the seller's profit, administrative expenses, etc.). For example, if an annuity costs $1,100, the cost of $1,100 is considered to be the present value of the payments under the annuity for purposes of the interest rate rule, even though $100 of the $1,100 represents the seller's administrative expenses and profit. In making this determination with respect to the interest rate used to determine the cost of an annuity, other factors and assumptions (e.g., mortality) are to be individually reasonable.

It is further intended that, for purposes of determining the reasonableness of an interest rate under the approach described above, the plan benefit is the normal benefit under the plan (without regard to, for example, any provision providing for a lump sum payment).

Regulatory authority

In addition to the regulatory authority provided under the House bill, the conference agreement authorizes the Secretary to prescribe regulations that apply, in lieu of the 150 percent of current liability limitation, a different full funding limitation based on fac-

tors other than current liability. The Secretary may exercise this authority only in a manner so that, in the aggregate, the effect of the regulations on Federal budget receipts is substantially identical to the effect of the 150-percent limitation.

Effect on other rules

In addition, under the conference agreement, the Secretary is to prescribe rules with respect to the treatment of contributions that would be required to be made but for the modification of the full funding limitation. The rules are to provide that the amount of such contributions are to be cumulated. In years in which the contributions required to be made to the plan are less than the full funding limitation (without regard to these cumulated amounts), the employer is to be required to contribute a portion of the cumulated amount. In determining the amount of this supplemental contribution, the Secretary may take into account factors such as the remaining working lifetime of the participants over which the entire cumulated amount may be contributed.

Study and issuance of regulations

The conference agreement requires the Treasury Department to study the effect of the modification of the full funding limitation on benefit security in defined benefit pension plans and to report the results of the study to the House Ways and Means Committee, the Senate Finance Committee, and the Joint Committee on Taxation by August 15, 1988.

In addition, under the conference agreement, the Secretary is to prescribe regulations under this provision no later than August 15, 1988.

2. MINIMUM FUNDING STANDARD AND DEDUCTIONS

A. Modifications of minimum funding standard

Present law

Affected plans

Under present law, certain pension plans are required to meet a minimum funding standard for each plan year. The present-law funding rules do not apply to (1) profit-sharing or stock bonus plans, (2) certain insurance contract plans, (3) governmental plans, (4) church plans, (5) plans that have not provided for employer contributions after September 2, 1974, and (6) certain plans maintained by an organization described in section 501(c) (8) or (9) of the Code.

Calculation of contribution

Under present law, certain defined benefit pension plans are required to meet a minimum funding standard for each plan year. The minimum funding standards require that an employer contribute an annual amount sufficient to fund a portion of participants' projected benefits determined in accordance with one of several prescribed funding methods, using actuarial assumptions that are reasonable in the aggregate.

Generally, a funding method calculates the cost of benefits under the plan in 2 components: (1) normal cost, which represents the cost of benefits allocated to the current year under the plan's funding method, and (2) a portion of the plan's accrued liabilities (i.e., all costs other than normal cost). The costs in (2) include costs with respect to past service liability (e.g., the cost of retroactive benefit increases), experience losses, and changes in actuarial assumptions. The amounts in (2) above are amortized over a period of years depending on the nature of the cost. Experience gains and gains from changes in actuarial assumptions are taken into account generally by offsetting a portion of the gains against the amounts determined under (1) and (2) above for the year. Losses increase such amounts.

Each defined benefit pension plan is required to maintain a special bookkeeping account called a "funding standard account". The account is charged with the costs described above and the amount necessary to amortize waived contributions (see below), and credited with the gains described above, the amount of waived contributions for the year, and contributions for the plan year. If, as of the close of a plan year, the account reflects credits equal to or in excess of charges, the plan is treated as meeting the minimum funding standard for the year. Thus, as a general rule, the minimum contribution for a plan year is determined as the amount by which the charges to the account would exceed credits to the account if no contribution were made to the plan.

Under present law, benefits contingent on events such as the shutdown of a facility are funded in the same manner as other benefits. Thus, the plan assumptions may include a probability that the shutdown or other contingency will occur. If too low a likelihood of the contingency occurring is assumed, then an experience loss occurs when the event occurs.

Valuation of assets

Under present law, the value of plan assets is to be determined in accordance with any reasonable actuarial method of valuation that takes into account fair market value and that is permitted under Treasury regulations. The regulations permit plan assets to be valued on the basis of the average value over a period not exceeding the 5 most recent plan years. Regardless of the valuation method used, the method must result in a value that is between 80 percent and 120 percent of fair market value or between 85 percent and 115 percent of average value as defined in the regulations (Treas. reg. sec. 1.412(c)(2)–1(b)(6)).

House bill

Ways and Means Committee bill

Affected plans.—A special funding rule applies to plans with a funded ratio less than 100 percent. This special rule does not apply to (1) plans exempt from the funding requirements under present law, or (2) multiemployer plans.

Calculation of contribution.—The bill retains the present-law funding standards. In addition, for plans with a funded ratio of less than 100 percent, the minimum funding contribution is the greater

of (1) the amount determined under the present-law rules (as modified by the bill), or (2) normal cost plus the greatest of—

(A) the unfunded amortization charge, which is the amount of the charge that would be determined if the unfunded termination liability were amortized in equal annual installments over (i) 3 years, if the funded ratio of the plan is less than 50 percent; (ii) 5 years, if the funded ratio equals or exceeds 50 percent and is less than 70 percent; or (iii) 15 years, if the funded ratio equals or exceeds 70 percent. This schedule is phased in over 6 years with respect to existing liabilities;

(B) the anti-insolvency amount, which is the sum of (i) nonannuity distributions for the plan year, plus (ii) the amount of the charge which would be determined if the liabilities for benefits in pay status and liabilities for benefits reasonably expected to commence within the net 5 years were amortized over 3 years; and

(C) the anti-deterioration amount, which is the sum of the amount necessary to amortize decreases in the funded ratio of the plan over 3 years, and 2 percent of the termination liability of the plan.

Cap on additional contribution.—A contribution in excess of the contribution required under the present-law funding rules generally is not required if a plan has a funded ratio of 100 percent.

Funded ratio.—A plan's funded ratio is the ratio of plan assets to "termination liability." "Termination liability" is generally defined as under present law, and thus includes all fixed and contingent liabilities under the plan, included liabilities for benefits that are in the plan upon termination, but may be eliminated prior to plan termination (Code sec. 401(a)(2)). Under the bill, "termination liability" for purposes of the funding rules does not include any benefit contingent on a facility shutdown, a contraction in workforce, or any event that is not reasonably and reliably predictable (as determined under regulations) until the event has occurred. The interest rate used in calculating termination liability is the rate used for funding purposes generally, which under the bill is required to be within 20 percent of a 5-year average of the applicable Federal long-term rate.

Existing liabilities.—"Existing liabilities" means the funded termination liability as of the beginning of the first plan year beginning after December 31, 1987 (determined without regard to any plan amendment adopted after June 30, 1987). Existing liabilities are reduced by all contributions in excess of normal cost.

Valuation of assets.—The bill provides that the regulations permitting asset valuations to be based on a range of other than fair market value are to have no force and effect. In addition, the bill provides that the Secretary of the Treasury is to amend the regulations to carry out the intent of this provision.

Effective date.—The provisions are effective with respect to plan years beginning after December 31, 1987. A special rule applies to steel company plans for the first 5 plan years the new funding rules are in effect.

Education and Labor Committee bill

Affected plans.—Same as the Ways and Means Committee bill. In addition, the additional funding rule for plans with a funded ratio less than 100 percent does not apply to plans that are not subject to the plan termination insurance program under Title IV of ERISA.

Calculation of contribution.—The bill retains the present-law funding standards, with certain modifications. In addition, a special funding rule applies to certain plans that have a funded ratio less than 100 percent. Under the special rule, the amount of the minimum funding contribution for a plan year is the greater of (1) the amount determined under the present-law funding rules (as modified by the bill) or (2) the sum of—

(A) the amount of benefit payments for the year (other than single sum distributions and payments for certain annuity contracts);

(B) the amount of the single sum distributions and payments for certain annuity contracts for the year multiplied by the excess (not less than zero and not more than 100 percent) of 150 percent over the funded ratio of the plan as of the beginning of the plan year;

(C) interest on the amount of unfunded vested benefits at the rate used by the plan for calculating the value of vested benefits; and

(D) the amount necessary to amortize any waived funding deficiency.

Cap on additional contribution.—For plans with a funded ratio greater than 50 percent, the amount required to be contributed under the new rule is capped at the greater of (1) the amount of unfunded vested benefits or (2) the amount required to bring the level of plan assets up to the funded ratio of the plan at the beginning of the plan year plus the funded ratio improvement factor. The funded ratio improvement factor is determined by multiplying 1 minus the funded ratio of the plan by 5 percent. Thus, the funded ratio improvement factor ranges from 0 to 2.5 percent.

Funded ratio.—A plan's funded ratio is the ratio of plan assets to vested benefits. The interest rate used for calculating the value of vested benefits is the rate used by the plan for funding purposes.

Existing liabilities.—Existing liabilities are treated the same as other liabilities under the new funding rule.

Effective date.—The provisions are effective with respect to plan years ending after December 31, 1991. A special rule applies to steel company plans for the first 5 plan years the new funding rule is in effect.

Senate amendment

Finance Committee amendment

Affected plans.—Same as the Ways and Means Committee bill. In addition, the new funding rules for plans with a funded ratio of less than 100 percent do not apply to (1) plans that are not defined benefit plans and (2) plans with no more than 100 participants on any day in the preceding plan year. In the case of a plan with more than 100 but no more than 150 participants during the preceding

year, the amount of the additional contribution is determined by multiplying the otherwise required additional contribution by 2 percent for each participant in excess of 100.

Calculation of contribution.—In general.—The amendment retains the present-law funding standards, with certain modifications. In addition, with respect to certain plans with a funded ratio less than 100 percent, the minimum required contribution is, in general terms, the greater of (1) the amount determined under section 412 (with the modifications made by the amendment), or (2) the sum of (i) normal cost, (ii) the amount necessary to amortize experience gains and losses and gains and losses resulting from changes in actuarial assumptions over 5 years, and (iii) the deficit reduction contribution. In addition, a special funding rule applies with respect to benefits that are contingent on unpredictable events.

Under the amendment, the deficit reduction contribution is the sum of (1) the unfunded old liability amount, and (2) the unfunded new liability amount. Calculation of these amounts is based upon the plan's "current liability".

Current liability.—Under the amendment, the term "current liability" means all liabilities to employees and their beneficiaries under the plan (Code sec. 401(a)(2)) determined as if the plan terminated. However, the value of any "unpredictable contingent event benefit" is not taken into account in determining current liability until the event on which the benefit is contingent occurs. An "unpredictable contingent event benefit" is in general any benefit contingent on an event other than (1) age, service, compensation, death, or disability, or (2) an event which is reasonably and reliably predictable as determined by the Secretary.

Current liability is generally determined in accordance with plan assumptions, including the interest rate assumption. However, the amendment provides a special limitation on the interest rate used for purposes of calculating current liability. Under the amendment, if the plan interest rate is not within the permissible range, then the plan must establish a new rate within the permissible range. The permissible range is defined as a rate of interest that is not more than 20 percent above or below the average mid-term applicable Federal rate (AFR) for the 3-year period ending on the last day before the beginning of the plan year for which the interest rate is being used (or, if shorter, the period that the AFR has been computed). The average is determined by averaging the rate in effect for each month during the applicable 3-year period. The Secretary may prescribe one or more indices in lieu of the average mid-term AFR to be used in determining the permissible range.

The amendment provides that certain service may be disregarded at the employer's election in calculating the plan's current liability. In the case of certain participants, the applicable percentage of the years of service before the individual became a participant are taken into account in determining current liability. The applicable percentage is (1) 0, if the individual has 5 or less years of participation, (2) 20, if the individual has 6 years of participation, (3) 40, if the individual has 7 years of participation, (4) 60, if the individual has 8 years of participation, (5) 80, if the individual has 9 years of participation, and (6) 100 if the individual has 10 or more year of

participation. Partial years of participation are rounded to the nearest whole year.

The amendment provides that unfunded current liability means, with respect to any plan year, the excess of (1) the current liability under the plan over (2) the value of the plan's assets reduced by any credit balance in the funding standard account. The funded current liability percentage of a plan for a plan year is the percentage that (1) the value of the plan's assets reduced by any credit balance in the funding standard account is of (2) the current liability under the plan.

Unfunded old liability amount.—The unfunded old liability amount is, in general, the amount necessary to amortize the unfunded old liability under the plan in equal annual installments (until fully amortized) over a fixed period of 15 plan years (beginning with the first plan year beginning after December 31, 1987). The "unfunded old liability" with respect to a plan is the unfunded current liability of the plan as of the beginning of the first plan year beginning after December 31, 1987, determined without regard to any plan amendment adopted after October 16, 1987, that increases plan liabilities (other than amendments adopted pursuant to certain collective bargaining agreements).

Under a special rule applicable to collectively bargained plans, increases in liabilities pursuant to a collective bargaining agreement ratified before October 17, 1987, are also amortized over 15 years.

Unfunded new liability amount.—The unfunded new liability amount for a plan year is the applicable percentage of the plan's "unfunded new liability." "Unfunded new liability" means the unfunded current liability of the plan for the plan year, determined without regard to (1) the unamortized portion of the unfunded old liability and (2) the liability with respect to any unpredictable contingent event benefits, without regard to whether or not the event has occurred. Thus, in calculating the unfunded new liability, all unpredictable contingent event benefits are disregarded, even if the event on which that benefit is contingent has occurred.

If the funded current liability percentage is less than 35 percent, then the applicable percentage is 30 percent. The applicable percentage decreases by .25 of one percentage point for each 1 percentage point by which the plan's funded current liability percentage exceeds 35 percent.

Unpredictable contingent event benefits.—If the event on which an unpredictable contingent event benefit is contingent occurs during the plan year and the assets of the plan are less than current liability (calculated after the event has occurred), then an additional funding contribution (over and above the minimum funding contribution otherwise due) is required. The amount of the required additional contribution is generally equal to the greater of (1) the amount of unpredictable contingent event benefits paid during the plan year (regardless of the form in which paid), including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract with respect to a participant with respect to such benefits, and (2) the amount that would be determined for the year if the unpredictable contingent event benefit liabilities were amortized in equal annual install-

ments over 5 years, beginning with the plan year in which the event occurs. For the year in which the event occurs, an amount equal to 150 percent of the amount determined under (1) above may, at the employer's election, be treated as the unpredictable contingent benefit amount. In no case, however, will the unpredictable contingent event amount exceed the unfunded current liability (including the liability due to the contingent event benefit) of the plan.

Cap on additional contribution.—Same as the Ways and Means Committee bill.

Funded ratio.—A plan's funded ratio is the ratio of plan assets to current liability.

Valuation of assets.—The portion of the regulations permitting asset valuations to be based on a range between 85 percent and 115 percent of average value are to have no force and effect.

Effective dates.—In general, the changes in the minimum funding requirements for defined benefit pension plans apply with respect to plan years beginning after December 31, 1988. Unpredictable contingent event benefits with respect to which the event has occurred before October 17, 1987, are not subject to the new funding rule for such benefits. If the event has not occurred before October 17, 1987, such benefits are subject to the new funding rules for such benefits. For the first plan year beginning after December 31, 1987, unpredictable contingent event benefits are subject to the provisions of the amendment relating to gains and losses.

With respect to provisions that cross reference the definition of "current liability", the definition is effective at the time the provision cross referencing it is effective.

The change in the valuation regulations if effective with respect to plan years beginning after December 31, 1987.

Labor and Human Resources Committee amendment

Affected plans.—Same as the Ways and Means Committee bill.

Calculation of contribution.—The amendment retains the present-law funding standards, with certain modifications. In addition, for certain plans with a funded ratio of less than 100 percent, the minimum funding contribution is the greater of (1) the amount determined under the present-law rules (as modified by the amendment), or (2) the sum of—

(1) normal cost;

(2) the amount necessary to amortize unfunded past service liability of individuals in pay status and the unfunded portion of nonannuity distributions for the year over 10 years; and

(3) the amount necessary to amortize the unfunded past service liability of individuals not in pay status over the greater of (i) 15 years or (ii) the plan's average worklife. The 15-year amortization period for past service liabilities is phased in with respect to existing liabilities over 5 years.

A special rule applies in the case of plans with all participants in pay status.

Cap on additional contribution.—Same as the Ways and Means Committee bill.

Funded ratio.—A plan's funded ratio is the percentage that plan assets are of "benefit liabilities." The term "benefit liabilities"

with respect to any person includes all benefits of such person under the plan (including benefits the reduction or elimination of which is not prohibited under section 411(d)(6) of the Code or section 204(g) of ERISA).

Existing liabilities.—"Existing liabilities" means liabilities not attributable to plan amendments after the date of enactment.

Effective date.—The provisions are effective for plan years beginning after December 31, 1987.

Conference agreement

In general

In general, the conference agreement follows the Finance Committee amendment, with certain modifications.

Affected plans

The conference agreement follows the Senate Finance Committee amendment. As under the Senate Finance Committee amendment, for purposes of the rules for plans with no more than 100 participants or plans with 101 to 150 participants, all defined benefit plans (including multiemployer plans) of the employer and the employer's controlled group are treated as a single plan. The definition of a controlled group is the same as the definition in section 414(b), (c), (m) and (o). With respect to a multiemployer plan, only employees of the employer (or a controlled group member) are taken into account.

Calculation of contribution

In general.—The conference agreement follows the Finance Committee amendment, with the following modifications. Gains and losses due to changes in actuarial assumptions are amortized over 10 years, rather than over 5 years. The conferees intend that reporting requirements will be revised as necessary to implement the new funding rules, for example, to reflect current liability, unfunded old liability, unfunded new liability, and the liabilities for unpredictable event contingent benefits.

Current liability.—Current liability is defined as in the Finance Committee amendment, with the following modifications. Thus, current liability is, in general, all liabilities to participants and beneficiaries under the plan (Code sec. 401(a)(2)) determined as if the plan terminated. Under the conference agreement, the permissible range for the interest rate is not more than 10 percent above or below the average rate for 30-year Treasury bonds for the 4-year period ending on the last day before the beginning of the plan year for which the interest rate is being used. Under appropriate circumstances, the Secretary of the Treasury may provide that the permissible range is expanded to include rates between 80 and 90 percent of the average rate described above. For purposes of determining the average rate for the 4-year period, the Secretary may prescribe rules weighting the more recent years more heavily.

No rate outside the permissible range is permitted under any circumstances. Also, the specified corridor is not intended to be a safe harbor with respect to whether an interest rate is reasonable. The Secretary is authorized to adjust a rate within the range to the

extent that it is unreasonable under the rules applicable to actuarial assumptions.

The conference agreement modifies the rule disregarding certain preparticipation service. Under the modification, preparticipation years of service are taken into account over 5 years of participation. Partial years of participation are rounded to the nearest whole year.

The rule disregarding preparticipation service is available with respect to any participant who, at the time of becoming a participant, has not accrued any other benefits under any defined benefit pension plan (whether or not terminated) of the employer or a member of the controlled group of the employer, and has years of service before such time in excess of the years of service required for eligibility to participate in the plan. The rule applies only with respect to new participants in years beginning after December 31, 1987. The rule is not elective.

With respect to the definition of unpredictable contingent event benefits, the conferees do not intend that an event will be considered reliably and reasonably predictable solely because an actuarial probability of the event occurring may be determined. It is further intended that the Secretary of the Treasury will prescribe rules defining events that can and cannot be reasonably and reliably predicted and will revise these rules as new benefits are developed.

Unpredictable contingent event benefits are intended to include benefits that depend on contingencies that, like facility shutdowns or reductions or contractions in workforce, are not reliably and reasonably predictable. Such contingencies are not limited to events that are similar to shutdowns or reductions in force. For example, a benefit dependent on the profits of the employer or the value of employer stock dropping below a certain level would be considered a benefit contingent on an event that is not reasonably and reliably predictable (unless the contingency is illusory).

If an employer provides an early retirement window benefit under which employees who have satisfied certain age or service requirements or both are offered a limited period of time during which they may elect to retire, such a window benefit is generally considered to be contingent on an event that can be reasonably and reliably predicted. The Secretary of the Treasury may, in appropriate circumstances, treat such window benefits as benefits which are contingent on an event that cannot be reasonably and reliably predicted.

It is intended that a benefit contingent on marital status, such as a qualified joint and survivor annuity, is generally to be considered a benefit that is contingent on an event that can be reasonably and reliably predicted.

It is intended that the Secretary of the Treasury may prescribe rules to prevent employers from avoiding the new minimum funding rules by characterizing contingencies as not reasonably and reliably predictable. For purposes of the definition of current liability, a benefit is generally not to be considered contingent on an event which is not reasonably and reliably predictable if there is substantial certainty that the event on which the benefit depends will occur.

An early retirement subsidy, social security supplement, survivor subsidy or similar benefit in addition to the basic retirement benefit under a plan that is payable only on the satisfaction of certain eligibility conditions (e.g., age and/or years of service eligibility conditions), is included in current liability (provided it is not an unpredictable event contingent benefit) to the extent that the employee has earned the subsidy, supplement, or similar benefit.

For example, assume that a plan provides that an employee is entitled to a basic retirement benefit commencing at age 65 of 1 percent of final average pay times years of service and that, if the employee retires at age 55 with at least 25 years of service, the employee's retirement benefit will not be actuarially reduced for early commencement (i.e., this is an early retirement subsidy). For purposes of calculating the current liability for such plan for a year, an employee age 50 with 20 years of service has a total retirement benefit (i.e., normal retirement benefit plus early retirement subsidy) of 80 percent of the unreduced age 55 benefit (based on final average pay at age 50). That is, there is no actuarial reduction for commencement before age 65. The same analysis applies in determining the extent to which a social security supplement, survivor subsidy, or similar benefit has been earned under the plan.

Current liability is generally determined in accordance with plan assumptions. Thus, in the example described above, because not all employees who have earned a right to some portion of the early retirement benefit will ultimately satisfy the eligibility conditions for the subsidy (e.g., not all such employees will remain with the employer until age 55 or retire at age 55), a plan is to calculate its current liability for the year by using reasonable turnover and mortality factors.

Unfunded old liability amount.—The conference agreement follows the Finance Committee amendment, except that the unfunded old liability amount is amortized over 18 years rather than 15 years. Thus, under the conference agreement, the unfunded old liability amount with respect to a collectively bargained plan is increased by the amount necessary to amortize the unfunded existing benefit increase liabilities in equal annual installments over a fixed period of 18 plan years, beginning with the plan year in which the increase in liabilities occurs pursuant to the bargaining agreement (or, if later, the first plan year beginning after December 31, 1988). For purposes of this rule, the unfunded existing benefit increase liability means the unfunded current liability determined by taking into account only (1) liabilities attributable to the increase in liabilities pursuant to the agreement, and (2) the value of assets in excess of current liability (determined without regard to the liabilities described in (1)).

For purposes of the special rule applicable to certain benefit increases pursuant to a collective bargaining agreement ratified before October 17, 1987, any extension, amendment, or other modification of a bargaining agreement after October 16, 1987, is not taken into account. In general, the special rule only includes increases in liability pursuant to the bargaining agreement and therefore does not include liability increases with respect to individuals covered by the plan who are not subject to the collective bargaining agreement. However, if more than 75 percent of the em-

ployees covered by the plan on October 16, 1987, are subject to the collective bargaining agreement, then the unfunded existing benefit increase liability includes the liability with respect to all employees in the plan whose benefits are determined directly or indirectly by reference to the terms of the bargaining agreement, whether or not such employees are subject to the agreement. Separate plans may not be treated as a single plan for purposes of this rule, even if the benefits under the plans are coordinated.

Unpredictable contingent event benefits

The conference agreement follows the Finance Commitee amendment with respect to the definition and funding of unpredictable contingent event benefits, except that the cash flow rule and amortization period are modified. Under the conference agreement, the amount of the additional contributions is generally equal to the greater of (1) the unfunded portion of the benefits paid during the plan year (regardless of the form in which paid), including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract with respect to a participant with respect to contingent event benefits, and (2) the amount that would be determined for the year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 years, beginning with the plan year in which the event occurs.

The effects of the cash flow rule in (1) are phased in at a rate of 5 percent for plan years beginning in 1989 and 1990, 10 percent for plan years beginning in 1991, 15 percent for plan years beginning in 1992, 20 percent for plan years beginning in 1993, 30 percent for plan years beginning in 1994, 40 percent for plan years beginning in 1995, 50 percent for plan years beginning in 1996, 60 percent for plan years beginning in 1997, 70 percent for plan years beginning in 1998, 80 percent for plan years beginning in 1999, 90 percent for plan years beginning in 2000, and 100 percent for plan years beginning in 20001.

The event on which an unpredictable contingent event benefit is contingent is generally not considered to have occurred until all events on which the benefit is contingent have occurred. If the event on which an unpredictable contingent event benefit is contingent occurs during the plan year and the assets of the plan equal or exceed current liability (calculated after the event has occurred), then the employer may continue to fund the plan's unpredictable contingent event benefits as under present law (i.e., generally as an experience loss), subject to application of the special rule if the plan's funding falls below current liability.

Cap on additional contribution

The conference agreement follows the Finance Committee amendment.

Funded ratio

The conference agreement follows the Finance Committee amendment.

Valuation of assets

The conference agreement follows the Finance Committee amendment with respect to the value of assets under section 412(c)(2)(A). In addition, the conference agreement repeals section 412(c)(2)(B) (except for multiemployer plans), subjecting bonds and other evidence of indebtedness to the general valuation rules. The Secretary may, however, prescribe regulations under which a dedicated bond portfolio is to be valued by using the interest rate used to determine current liability.

Effective date.—The conference agreement generally follows the Finance Committee amendment, except that the modified cash flow rule for unpredictable contingent event benefits is effective for plan years beginning after December 31, 1988.

In addition, the conference agreement adopts the special rule for steel employer plans in the Ways and Means Committee bill, with a modification. Under the modification, liabilities (and contributions) with respect to unpredictable event contingent benefits with respect to which the contingency occurs after December 17, 1987, are not taken into account in calculating current liability under the rule, but are amortized separately over 10 years.

B. TIME FOR CONTRIBUTIONS

Present law

In general

Under present law, the minimum required contribution for a plan year must be made within 8-½ months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year.

Present law contains no requirement that an employer make installment payments to a plan during the plan year.

Failure to make total contribution for plan year

The employer who is responsible for contributing to a defined benefit pension plan is liable for an excise tax equal to 5 percent of any accumulated funding deficiency (sec. 4971). The term "accumulated funding deficiency" means the excess of total charges to the funding standard account over the total credits to such account. The excise tax increases to 100 percent if the deficiency is not corrected within the taxable period.

House bill

Ways and Means Committee bill

In general

Under the bill, three installments of estimated contributions are required during the plan year, with the total contribution due within 2-½ months after the end of the plan year. The amount of each installment is ¼ of the lesser of (1) 80 percent of the amount required to be contributed for the current plan year or (2) 90 percent of the amount required to be contributed for the preceding plan year.

Failure to make installments.—An excise tax is imposed if the full amount of any required installment is not paid. The excise tax is determined by applying the interest rate for underpayment of income taxes to the amount of the underpayment for the period of the underpayment. The period of the underpayment begins on the due date of the installment and ends on the earlier of the date on which the underpayment is contributed to the plan or the date the total contribution is due. Each member of the employer's controlled group is jointly and severally liable for the tax.

Failure to make total contribution for plan year.— Each member of the employer's controlled group is jointly and severally liable for the excise tax.

Effective dates.—The acceleration of the due date for required plan contributions generally is effective for plan years beginning after December 31, 1988, with a phase-in rule applying for plan years beginning in 1988. The provision requiring plan contributions to be made in installments is effective for plan years beginning after December 31, 1987, with a transition rule applicable for 1988 plan years.

Education and Labor Committee bill

In general.—Similar to the Ways and Means Committee bill, except that installment contributions are required only if a plan has an outstanding funding waiver. In that case, four installments are required during the plan year and the amount of each required installment is ¼ of the lesser of (1) 100 percent of the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year.

Failure to make installments.—Same as the Ways and Means Committee bill. The tax is imposed on the employer responsible for contributions to the plan.

Failure to make total contribution for plan year.—Same as the Ways and Means Committee bill.

Effective dates.—The provisions apply for plan years beginning after December 31, 1988.

Senate amendment

Finance Committee amendment

In general.—Similar to the Ways and Means Committee bill, except that four installments are required during the plan year, with the total contribution due within 8-½ months after the end of the plan year. The amount of each required installment is ¼ of the lesser of (1) 90 percent of the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year.

Failure to make installments.—Same as the Ways and Means Committee bill, except that interest is paid to the plan rather than as an excise tax, and the interest rate on missed contributions is the greater of (1) 175 percent of the mid-term applicable Federal interest rate (AFR) or (2) the rate of interest taken into account in determining costs under the plan. In addition, a lien arises if a re-

quired installment is not paid in full. The employer is required to notify employees of the failure to make required installments.

Failure to make total contribution for plan year.—Same as the Ways and Means Committee bill. In addition, the 5-percent excise tax is increased to 10 percent, and a lien arises in favor of the plan if the required contribution is not paid in full. The employer is required to notify employees of the failure to make contributions.

Effective dates.—The provisions apply for plan years beginning after December 31, 1987.

Labor and Human Resources Committee amendment

In general.—Similar to the Education and Labor Committee bill, except that four installments are required for the plan year.

Failure to make installments.—Same as the Education and Labor Committee bill.

Failure to make total contribution for plan year.—Same as the Ways and Means Committee bill.

Effective dates.—The provision requiring quarterly installment payments is effective for plan years beginning after December 31, 1990. The provision relating to liability for the excise tax for a failure to make required contributions for a plan year applies with respect to taxes imposed for taxable years beginning after December 31, 1987.

Conference agreement

The conference agreement generally follows the Finance Committee amendment, with modifications.

With respect to the interest rate applicable to a failure to make contributions when due, the conference agreement clarifies that the interest rate continues at the specified rate until the missed contributions are actually paid to the plan.

In the case of a plan with a funded ratio of less than 100 percent, a statutory tax lien arises on all controlled group property in favor of the plan 60 days after the due date of an unpaid contribution (whether or not a waiver application is pending). The amount of the lien is the cumulative missed contributions in excess of $1 million. Missed contributions originally due before the effective date are not subject to this lien provision (but they are taken into account in applying the $1 million rule).

Under the conference agreement, the employer and each member of the controlled group that includes the employer are liable for contributions required under the minimum funding rules. However, this controlled group liability does not alter the rules for determining the extent to which an employer's contributions to a plan are deductible. Thus, in general, a deduction for a contribution is available under section 404 only for the employer who directly employs the participants.

C. FUNDING WAIVERS

Present law

In general

An employer may obtain a waiver of the minimum funding requirement if the employer is unable to satisfy the requirement without substantial business hardship and if application of the requirement would be adverse to plan participants. Under IRS administrative procedures, a waiver generally will not be granted unless the employer demonstrates that the business hardship is likely to be temporary.

Time for requesting waivers

Under IRS administrative procedures, a request for a waiver must be submitted by the end of the plan year following the plan year for which the waiver is requested. The time for submitting a waiver request may be extended for good cause.

Frequency of waivers

Under present law, funding waivers cannot be granted in more than 5 of any 15 consecutive plan years.

Notice of waiver requests

An employer is required, under present law, to notify each employee organization representing employees covered under the plan that a waiver has been requested.

Interest rate charged for waived contributions

The interest rate charged on waived contributions is the rate charged with respect to late payments of income taxes.

Amortization period for waived contributions

Waived contributions are amortized over 15 years.

Security required for waived contributions

The IRS may require an employer to provide security as a condition of granting a funding waiver if the outstanding balance of accumulated funding deficiencies and certain other amounts equals or exceeds $2 million.

House Bill

Ways and Means Committee bill

In general.—The bill clarifies that a waiver can be granted only if the business hardship is temporary and if the entire controlled group of which the employer is a member, as well as the employer itself, is experiencing the hardship.

Time for requesting waivers.—A request for a waiver is required to be submitted within 2-½ months after the end of the plan year.

Frequency of waivers.—Funding waivers cannot be granted in more than 3 of any 15 consecutive plan years.

Notice of waiver requests.—In addition to the notice to employee organizations, an employer is required to demonstrate that it made

reasonable efforts to notify current employees that a waiver is being requested.

Interest rate charged for waived contributions.—The interest rate charged on waived contributions is the greater of (1) the rate used in computing costs under the plan, or (2) 150 percent of the mid-term applicable Federal interest rate (AFR) in effect for the first month of the plan year.

Amortization period for waived contributions.—The amortization period for waived contributions is the greater of (1) 5 years or (2) 15 years multiplied by the funded termination liability percentage for the plan year, rounded to the nearest whole number of years.

Security required for waived contributions.—The bill lowers from $2 million to $250,000 the threshold on the accumulated funding deficiency with respect to which the IRS can require security. In the case of a plan with accumulated funding deficiencies in excess of $1 million or a plan that is not more than 70 percent funded, the PBGC is authorized to require that an employer provide security as a condition of granting a funding waiver.

Effective dates.—The provision relating to the funding waivers generally is effective with respect to (1) any application for a funding waiver submitted after June 30, 1987, and (2) any waiver granted with respect to an application submitted after June 30, 1987. The provision requiring that applications for funding waivers be filed within 2-1/2 months following the close of a plan year is effective for plan years beginning after December 31, 1987, with a transition rule for 1988 plan years.

Education and Labor bill

In general.—Same as the Ways and Means Committee bill.

Time for requesting waivers.—Same as the Ways and Means Committee bill.

Frequency of waivers.—Same as the Ways and Means Committee bill.

Notice of waiver requests.—The present-law notice is to be provided to all affected parties (i.e., participants, beneficiaries, alternate payees, and employee organizations representing employees covered under the plan). In addition, the notice must describe the extent to which the plan is funded with respect to guaranteed benefits and benefit liabilities.

Interest rate charged for waived contributions.—Same as the Ways and Means Committee bill, except that 120 percent of the mid-term applicable Federal interest rate (AFR), rather than 150 percent, is used.

Amortization period for waived contributions.—Same as the Ways and Means Committee bill, except that benefit liabilities, rather than termination liability, is used and partial years are rounded to the next highest whole number of years.

Security required for waived contributions.—No provision.

Effective dates.—The provision relating to funding waivers generally is effective with respect to (1) any application for a funding waiver submitted after the date of enactment with respect to a plan year beginning after December 31, 1985, and (2) any waiver granted with respect to such an application. The provision requiring that applications for funding waivers be filed within 2-½

months following the close of a plan year is effective for plan years beginning after December 31, 1987, with a transition rule for 1988 plan years.

Senate amendment

Finance Committee amendment

In general.—Same as the Ways and Means Committee bill, except that a waiver cannot be granted if the plan's funded ratio is less than 100 percent.

Time for requesting waivers.—An application for a waiver with respect to any required contribution (including required installments) is required to be submitted before the due date of the contribution.

Frequency of waivers.—No provision.

Notice of waiver requests.—No provision.

Interest rate charges for waived contributions.—Same as the Ways and Means Committee bill.

Amortization period for waived contributions.—No provision.

Security required for waived contributions.—No provision.

Effective dates.—The provisions apply with respect to any application for a funding waiver submitted for any plan year beginning after December 31, 1987.

Labor and Human Resources Committee amendment

In general.—Same as the Ways and Means Committee bill.

Time for requesting waivers.—Same as the Ways and Means Committee bill.

Frequency of waivers.—Same as the Ways and Means Committee bill.

Notice of waiver requests.—Same as the Education and Labor Committee bill, except that no definition of affected party is provided.

Interest rate charged for waived contributions.—Same as the Education and Labor Committee bill.

Amortization period for waived contributions.—The amortization period for waived contributions is 5 plan years.

Security required for waived contributions.—No provision.

Effective dates.—Same as the Education and Labor Committee bill, except that the provision requiring applications for waivers to be filed within 2-½ months following the close of a plan year is effective for plan years beginning after the date of enactment.

Conference agreement

In general

The conference agreement follows the Ways and Means Committee and Education and Labor Committee bills, and the Labor and Human Resources Committee amendment. In addition, the conference agreement provides that the Secretary may provide that an analysis of the financial hardship of a member of the controlled group of the employer need not be conducted. Such an analysis is not necessary because taking into account the circumstances of the member of the controlled group would not significantly affect the

determination of whether a waiver should be granted. Although, with respect to multiemployer plans, the conference agreement does not incorporate in the statute the requirement that the financial hardship be temporary, the conferees do not intend to create an inference with respect to the current IRS practice of granting waivers only in the case of temporary hardship.

Time for requesting waivers

The conference agreement follows the Ways and Means Committee and Education and Labor Committee bills, and the Labor and Human Resources Committee amendment.

Frequency of waivers

The conference agreement follows the Ways and Means Committee and Education and Labor Committee bills, and the Labor and Human Resources Committee amendment, except that employers will not be treated as exceeding the number of permissible waivers due to waivers granted with respect to the plan years beginning before January 1, 1988. Thus, under the conference agreement, employers are provided a fresh start with respect to the frequency limit on waivers. As under present law, where a plan undergoes a transaction pursuant to the Implementation Guidelines, the successor plan shall not be considered a new plan for purposes of the frequency limit on waivers.

Notice of waiver requests

The conference agreement follows the Education and Labor Committee bill and the Labor and Human Resources Committee amendment. The conference agreement does not require that the employer furnish a copy of the waiver request to employees, and does not require that the Secretary furnish (or make available) a copy of the request to employees.

Interest rate charged for waived contributions

The conference report follows the Ways and Means Committee bill and the Finance Committee amendment.

Amortization period for waived contributions

The conference agreement follows the Labor and Human Resources Committee amendment.

Security for waivers

The conference agreement follows the Education and Labor Committee bill, and the Finance Committee and Labor and Human Resources Committee amendments, except that the present-law threshold with respect to which IRS may require security, etc., is reduced from $2 million to $1 million.

Effective date.—The conference agreement follows the Ways and Means Committee bill, except that the date after which a submission of a funding waiver request is subject to the funding waiver provisions is December 17, 1987, rather than June 30, 1987. In addition, the provision regarding notice of waiver requests is effective with respect to applications for waivers submitted more than 90 days after the date of enactment.

D. AMORTIZATION PERIOD FOR UNFUNDED LIABILITIES

Present law

The amortization period for certain unfunded liabilities may be extended by the Secretary of the Treasury for up to 10 years. The employer is required to notify each employee organization representing employees covered under the plan that an extension has been requested. The interest rate charged with respect to an extension is the rate for underpayment of income tax. The same rules relating to security for funding waivers apply to extensions of amortization periods.

House bill

Ways and Means Committee bill

The same rules under the bill relating to security for funding waivers apply to extensions of amortization periods.

The provision applies to applications for extensions filed after the date of enactment.

Education and Labor Committee bill

The employer is required to notify each affected party that an extension is being requested. The interest rate charged with respect to an extension is the greater of (1) the interest rate used for calculating contributions under the plan or (2) 120 percent of the mid-term AFR in effect on the first day of the plan year for which the extension is requested.

The provision is effective with respect to (1) any application for an extension submitted after the date of enactment with respect to a plan year beginning after December 31, 1985, and (2) any waiver granted pursuant to such an application.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

Same as the Education and Labor Committee bill, except that no definition of affected party is provided.

The provision applies to applications for extensions filed on or after the date of enactment.

Conference agreement

The conference agreement follows the Education and Labor Committee bill and the Labor and Human Resources Committee amendments, with two modifications.

First, the interest rate charged is the greater of (1) the rate used in computing costs under the plan, or (2) 150 percent of the mid-term AFR in effect for the first month of the plan year.

Second, the $2 million threshold on the accumulated funding deficiency with respect to which the IRS can require security is reduced to $1 million, as under the rules for funding waivers.

The effective date of the provision is the same as the effective date of the funding waiver provisions.

E. EXPERIENCE GAINS AND LOSSES

Present law

Experience gains and losses for a year are required to be amortized over a 15-year period.

House bill

Ways and Means Committee bill

The period for amortizing experience gains and losses is reduced to 3 years from 15 years.

The provision is effective for plan years beginning after December 31, 1987.

Education and Labor Committee bill

The period for amortizing experience gains and losses is reduced to 5 years from 15 years.

The provision is effective for plan years beginning after December 31, 1988.

Senate amendment

Finance Committee amendment

The Finance Committee amendment is the same as the Education and Labor Committee bill, except that the provision is effective for years beginning after December 31, 1987.

Labor and Human Resources Committee amendment

The period for amortizing experience gains and losses is reduced to 7 years from 15 years.

The provision is effective for plan years beginning on or after the date of enactment.

Conference agreement

The conference agreement follows the Finance Committee amendment. The provision does not apply to gains and losses arising in plan years beginning before January 1, 1988.

F. GAINS AND LOSSES DUE TO CHANGES IN ASSUMPTIONS

Present law

Gains and losses due to changes in actuarial assumptions are required to be amortized over 30 years.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

No provision.

Senate amendment

Finance Committee amendment

Gains and losses due to changes in actuarial assumptions are amortized over 5 years.

The provision is effective for years beginning after December 31, 1987.

Labor and Human Resources Committee amendment

Gains and losses due to changes in actuarial assumptions are amortized over 7 years.

The provision is effective for plan years beginning on or after the date of enactment.

Conference agreement

The conference agreement follows the Finance Committee amendment, except that the amortization period is 10 years.

G. ACTUARIAL ASSUMPTIONS MUST BE REASONABLE

Present law

The actuarial assumptions used to determine cost, liabilities, interest rates, and other factors under a plan are required to be reasonable in the aggregate.

House bill

Ways and Means Committee bill

All costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods (1) each of which is reasonable individually or (2) which result, in the aggregate, in a total plan contribution equivalent to the contribution that would be obtained if each assumption were reasonable.

The interest rate used in calculating costs generally is required to be within a permissible range, defined as an interest rate not more than 20 percent above or below the average long-term AFR for the 5-year period ending on the last day of the preceding plan year.

The provision applies to plan years beginning after December 31, 1987.

Education and Labor Committee bill

No provision.

Senate amendment

Finance Committee amendment

The Finance Committee amendment is the same as the Ways and Means bill, except that the amendment does not include the requirement that the plan's interest rate be within the permissible range.

The provision applies to years beginning after December 31, 1987.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Finance Committee amendment, with certain modifications. The interest rate applicable in determining current liability is required to be used with respect to determining the required contribution under section 412(1).

In addition, with respect to the interest rate that is used to determine current liability and thus is required to be within the permissible range, the determination of whether such interest rate is reasonable depends on the cost of purchasing an annuity sufficient to satisfy current liability. The interest rate is to be a reasonable estimate of the interest rate used to determine the cost of such annuity, assuming that the cost only reflected the present value of the payments under the annuity (i.e., did not reflect the seller's profit, administrative expenses, etc.). For example, if an annuity costs $1,100, the cost of $1,100 is considered to be the present value of the payments under the annuity for purposes of the interest rate rule, even though $100 of the $1,I00 represents the seller's administrative expense and profit. Also, in making this determination with respect to the interest rate used to determine the cost of an annuity, other factors and assumptions (e.g., mortality) are to be individually reasonable.

It is further intended that, for purposes of determining the reasonableness of an interest rate under the approach described above, the plan benefit generally is the normal benefit under the plan (without regard to, for example, any provision providing for a lump sum payment).

H. LIMITATION ON AMORTIZATION OF PAST SERVICE COSTS

Present law

A deduction is allowed for contributions necessary to amortize past service or other supplementary credits in equal amounts over 10 years. In *AMP, Inc.* v. *U.S.,* the 3rd Circuit held that the amortizable base for purposes of determining an employer's maximum deduction includes all past service liability, rather than only the unfunded portion of its past service liability.

House bill

Ways and Means Committee bill

The bill clarifies that the amortizable base in determining an employer's maximum deduction for past service liability equals only the unfunded costs attributable to such liability.

The provision is effective for plan years beginning after December 31, 1987.

Education and Labor Committee bill

No provision.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill. No inference is intended with respect to present law.

I. LIMITATION ON DEDUCTION FOR CONTRIBUTIONS TO CERTAIN PLANS NOT LESS THAN UNFUNDED TERMINATION LIABILITY

Present law

An employer's contributions to a defined benefit pension plan may not be deductible even though the sum of the contributions plus the plan assets do not exceed the plan's termination liability for the plan year.

House bill

Ways and Means Committee bill

The maximum deduction limit for contributions is not less than the unfunded termination liability of the plan. This rule applies only to a plan subject to the plan termination insurance provisions of ERISA and only if the plan has 100 or more participants during the plan year.

The provision is effective for plan years beginning after December 31, 1987.

Education and Labor Committee bill

The maximum deduction limit is not less than the unfunded vested liabilities under the plan. The increased deduction limit applies to all defined benefit pension plans.

The provision is effective for plan years beginning after December 31, 1988.

Senate amendment

Finance Committee amendment

The Finance Committee amendment follows the Ways and Means Committee bill (using "current liability" instead of "termination liability," without a substantive change), except that the increased deduction limit applies to all defined benefit pension plans with 100 or more participants.

The provision is effective for years beginning after December 31, 1987.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Finance Committee agreement, but also provides that, in determining unfunded current liability, assets are not reduced by credit balances.

3. EMPLOYER ACCESS TO PLAN ASSETS

A. Plan Termination

1. EMPLOYER REVERSIONS

a. Assets available for recovery

Present law

Allocation of excess assets to employee contributions.—On plan termination, an employer may recover plan assets that are in excess of the plan's termination liability to plan participants and their beneficiaries if such excess is due to actuarial error and to the extent that such excess is not attributable to employee contributions. Termination liability includes all vested and contingent liabilities, including those for which the eligibility conditions have not been satisfied as of the date of plan termination. Excess assets are allocated to employee contributions in accordance with one of several methods. At least one court has held that employee contributions (and earnings) are applied first to fund accrued benefits, with the result that the entire excess may be allocated to employer contributions.

Required provision of benefits.—On plan termination, the employer may recover all assets in excess of termination liability (to the extent not attributable to employee contributions) if the plan provides for such recovery.

Implementation Guidelines.—In 1984, the Department of Treasury, Department of Labor, and Pension Benefit Guaranty Corporation (PBGC) issued the "Implementation Guidelines for Terminations of Defined Benefit Plans." Pursuant to these guidelines, an employer is entitled to recover excess assets from a plan that, although formally terminated, is not terminated in substance.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

Allocation of excess assets to employee contributions.—Assets in excess of "benefit liabilities" are allocated to mandatory employee contributions in the ratio that the present value of accrued benefits attributable to mandatory employee contributions bears to the present value of total benefits. Such excess is allocated among participants, beneficiaries, alternate payees, and persons who received a total distribution of plan benefits during the 3-year period before plan termination, based on the amount of employee contributions they are entitled to. The term "benefit liabilities" has the same meaning as termination liability under present law.

Required provision of benefits.—If a plan terminates with assets in excess of benefit liabilities and amounts attributable to employee contributions, certain excess assets generally are to be allocated to participants, beneficiaries, alternate payees, and persons who received a total distribution of plan benefits during the 3-year period prior to plan termination. The excess assets subject to this rule are limited to those necessary for the plan to attain the minimum benefit security level (MBSL), as defined below with respect to withdrawals from ongoing plans. These excess assets are allocated in proportion to benefits (up to half of the defined benefit plan dollar limit under sec. 415), subject to the applicable rules with respect to limits on benefits (sec. 415) and nondiscrimination (sec. 401(a)(4)).

Effective date.—These provisions apply to plans with a termination date on or after July 22, 1987.

Senate amendment

Finance Committee amendment

The Finance Committee amendment confirms present law as contained in the Implementation Guidelines.

Labor and Human Resources Committee amendment

Allocation of excess assets to employee contributions.—The Labor and Human Resources Committee amendment is the same as the Education and Labor Committee bill.

Required provision of benefits.—The Labor and Human Resources Committee amendment is the same as the Education and Labor Committee bill, except that the allocation of excess assets to participants, etc., is to be made on a per capita rather than a pro rata basis.

Effective date.—These provisions apply to plans with a termination date on or after October 9, 1987.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, with one modification. The conference agreement follows the Education and Labor Committee bill with respect to the allocation of excess assets to employee contributions, except that the effective date is for plan terminations for which notice of termination is sent to participants after December 17, 1987.

b. Other restrictions

Present Law

An employer may not recover excess assets (i.e., a reversion) unless the plan document permits such recovery. The employer may amend the plan at any time prior to termination in order to permit such recovery.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

An employer may receive a reversion of assets in excess of those required to be allocated under the rule described above, but only if the plan so provides. In determining the extent to which a plan provides for the reversion of excess assets, any provision providing for a reversion or increasing the amount that may revert is not effective before the end of the 5th calendar year following the date of the adoption of the provision. A special rule applies with respect to a plan that has been in existence less than 5 years. Additional rules apply to prevent avoidance of this requirement through transactions such as plan mergers.

Any assets that may not be distributed to the employer because of the above rule are to be distributed to participants, beneficiaries, etc., subject to the applicable limits on benefits (sec. 415) and to the nondiscrimination rules (sec. 401(a)(4)).

These provisions apply to plan terminations with respect to which the termination date occurs on or after July 22, 1987.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

The Labor and Human Resources Committee amendment generally is the same as the Education and Labor Committee bill, except that the provision applies to plans with a termination date on or after October 9, 1987. In addition, no reversion to the employer is allowed if the employer has terminated any plan without sufficient assets to pay benefit liabilities. This restriction does not apply if the PBGC and plan participants have been made whole for any loss suffered.

Conference agreement

The conference agreement follows the Education and Labor Committee bill, with a modification of the effective date.

2. SPECIAL FUNDING RULES

a. In general

Present law

The recovery of a reversion from one defined benefit plan does not affect an employer's funding obligations with respect to other defined benefit plans that it maintains.

House bill

Ways and Means Committee bill

In general.—If an employer receives a reversion with respect to a defined benefit plan, a special funding rule applies to other defined benefit plans maintained by the same employer that (1) are not multiemployer plans, and (2) have an "unfunded amount." The term "unfunded amount" means the excess (if any) of (1) the great-

er of 125 percent of termination liability or the value of projected benefits, over (2) the value of plan assets.

Applicable period.—The special funding rule applies in plan years beginning in the calendar year in which the reversion is received and in the 3 succeeding years.

Funding and allocation rules.—The special funding rule requires that the reversion be used over the applicable 4-year period to reduce the unfunded amounts in the plans to which the rule applies. Each year in which the special funding rule applies, the portion of the reversion that is required to be contributed in that year is first allocated to the plans that have the largest unfunded amounts in relation to the asset level necessary to eliminate the unfunded amounts. A special rule applies if one of the plans to which the special funding rule applies is terminated.

Asset transfers.—Because the determination of the unfunded amount of a plan is remade each year, any assets contributed or transferred to a plan reduce the unfunded amount in the transferee plan.

Security.—The PBGC may require, as a condition of plan termination, that an employer provide security to the plan with respect to the contributions required by the special funding rule. Such security may be perfected only by the PBGC or, at the direction of the PBGC, by the employer.

Funding waivers.—Contributions required by the special funding rule are eligible for funding waivers under the same rules applicable to other required contributions.

Effective date.—The provision applies to any reversion received after June 30, 1987, except that the provision does not apply to any reversion on account of a termination if notice to the PBGC of such termination was provided on or before June 30, 1987.

Education and Labor Committee bill

In general.—If an employer terminates a plan and receives a reversion, a special funding rule applies to defined benefit plans maintained by the same employer that (1) are not multiemployer plans, and (2) have a "funding shortfall." The term "funding shortfall" means the excess (if any) of (1) the lesser of (i) the minimum benefit security level (MBSL) of the plan or (ii) the assets necessary so that the plan would be funded at the controlled group funded ratio (CGFR) over (2) the value of plan assets. The controlled group funded ratio is the ratio of the assets in all plans of the employer to the sum of all benefit liabilities in such plans.

Applicable period.—The special funding rule applies in the 3 plan years following the plan year in which the reversion occurs.

Funding and allocation rules.—The special funding rule requires that the reversion be used over the applicable 3-year period to amortize the funding shortfalls of the plans to which the rule applies. The reversion is first allocated to the plans that have the lowest funded ratio (i.e., the ratio of plan assets to benefit liabilities). Unlike the Ways and Means Committee bill, this allocation occurs only once—in the year of the reversion—and subsequent contributions are based on this allocation.

Asset transfers.—Assets transferred to a plan from another defined benefit plan of the employer are treated like employer contri-

butions and thus reduce the contribution required under the special funding rule.

Security.—As part of the minimum funding rules, the employer is required to provide security to the applicable plans with respect to the special funding rule. The security is to be in the form of a surety bond or an escrow account.

Funding waivers.—Contributions required by the special funding rule may not be waived.

Effective date.—These provisions apply to plan terminations with a termination date on or after the date of enactment.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

The Senate Labor and Human Resources Committee amendment generally is the same as the Education and Labor Committee bill.

Conference agreement

The conference agreement follows the Finance Committee amendment.

3. TRANSFER OF PLAN SPONSORSHIP

Present law

Through certain transactions (e.g., plan mergers, consolidations, or transfers, or the assumption of a plan by another entity), an employer may benefit from the excess assets in a particular plan in the same way that the employer benefits from the amount recovered upon a plan termination. Similarly, through certain such transactions, employers are able to dispose of underfunded plans.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

In general.—A special funding rule similar to the one described above with respect to reversions applies if certain transactions occur and 2 conditions are satisfied.

Transactions covered.—Generally, the covered transactions include plan mergers, consolidations, and transfers, and the assumption of a plan by another entity.

Conditions.—The conditions that are required to be satisfied are:

(1) Immediately following any one of such transactions, the defined benefit plan involved in the transaction or any defined benefit plan maintained by the employer that maintained such plan immediately before the transaction has a funding shortfall (i.e., is a "shortfall plan"), and

(2) Immediately before the transaction, any defined benefit plan maintained by such employer was overfunded (i.e., had

assets in excess of the greater of benefit liabilities or the CGFR level).

Plans covered.—The special funding rule applies to defined benefit plans other than multiemployer plans.

Funding requirement.—The special funding rule requires that an amount equal to the assets held by the overfunded plans in excess of the greater of benefit liabilities or the CGFR be used to amortize the funding shortfalls of the shortfall plans over the following 3 plan years. If there is more than one shortfall plan, such amounts are to be allocated first to the plans that have the lowest funding ratios. The amounts allocated to each shortfall plan are to be reduced by the amounts (if any) allocable to such plan on a post-transaction basis. (For this purpose, all assets held by an employer's overfunded plans in excess of the greater of benefit liabilities or the CGFR are "allocable" among all of the shortfall plans maintained by the employer immediately after the transaction.) The reduction described in the preceding sentence generally is not available in cases involving a transfer of assets between plans of the same employer if, following the transfer, the transferee plan is funded at a level above the level of the transferor plan.

Effective date.—These provisions apply to transactions occurring on or after the date of enactment.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

The Labor and Human Resources Committee amendment generally is the same as the Education and Labor Committee bill.

Conference agreement

The conference agreement follows the Ways and Means Committee bill and the Finance Committee amendment.

B. ONGOING PLANS

1. Assets available for recovery

Present law

An employer is not entitled to recover excess assets from an ongoing plan.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

In general.—A withdrawal from an ongoing plan may be made if (1) the value of plan assets in the plan from which the withdrawal is made exceeds the plan's minimum benefit security level (MBSL), and (2) the value of plan assets in each other plan maintained by

the employer equals or exceeds such plan's MBSL. Only assets in excess of the plan's MBSL may be withdrawn.

Definition of MBSL.—In a plan that does not provide any qualified event contingent benefits, the MBSL is the sum of (1) the greater of the full funding limit with respect to the plan (using the projected unit credit method) or 125 percent of the present value of benefit liabilities and (2) the amount of any excess assets that are attributable to mandatory employee contributions.

In a plan that does provide qualified event contingent benefits, the MBSL is the lesser of (1) the MBSL determined without regard to qualified event contingent benefits but calculated using 150 percent in lieu of 125 percent in the formula described above, or (2) the amount of the MBSL calculated as if the contingency had occurred with respect to all qualified event contingent benefits.

Qualified event-contingent benefits.—A qualified event contingent benefit is a benefit or subsidy that is contingent upon the occurrence of an event that (1) has not occurred and (2) does not occur solely with respect to a participant or beneficiary (such as the attainment of any age, disability, death, or the completion of any period of service).

Transfers.—Tax-free transfers between defined benefit plans of the same employer of assets in excess of liabilities are permitted. Such net asset transfers from defined benefit plans to defined contribution plans are not permitted regardless of the form of the transaction (e.g., merger).

Effective date.—These provisions generally apply to withdrawals occurring after the date 90 days after the date of enactment. The rule prohibiting net asset transfers from defined benefit plans to defined contribution plans applies to transactions occurring after July 21, 1987.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

In general.—The Labor and Human Resources Committee amendment generally is the same as the Education and Labor Committee bill with the following exceptions.

Definition of MBSL.—For plans with qualified event-contingent benefits, the MBSL is the lesser of (1) the sum of (i) 150 percent of the greater of the full funding limit with respect to the plan (using the projected unit credit method) or 125 percent of the present value of benefit liabilities, and (ii) the amount of any excess assets that are attributable to mandatory employee contributions, or (II) the amount of the MBSL calculated as if the contingency had occurred with respect to all qualified event contingent benefits.

Transfers.—There is no provision with respect to transfers from defined benefit plans to defined contribution plans.

Conference agreement

The conference agreement follows the Ways and Means Committee bill and the Finance Committee amendment.

2. OTHER RESTRICTIONS

Present law

An employer is not entitled to recover assets from an ongoing plan.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

Plan provisions.—A withdrawal may not be made unless the plan so provides. In determining the extent to which a plan provides for withdrawals, any provision providing for withdrawals or increasing the amount that may be withdrawn is not effective before the end of the 5th calendar year following the later of (1) the date of adoption of the provision, and (2) the date notice of the provision is provided to affected parties.

This rule does not apply to a plan that provided for a distribution of plan assets to the employer upon plan termination on July 1, 1987. For such plans, any provision providing for withdrawals or increasing the amount that may be withdrawn is not effective before the end of the 180-day period following written notice of the amendment to affected parties. In addition, if a plan is amended in its first plan year beginning after December 31, 1988, to allow withdrawals, the rule described above applies as if "4th" were substituted for "5th".

Special rules apply to prevent avoidance of the 5-year requirement through transactions such as plan mergers.

Notice.—At least 30 days before a withdrawal, the plan administrator is required to file with the IRS an actuarial statement evidencing compliance with the MBSL requirements.

Within 60 days after the date of a withdrawal, the employer is required to provide certain information with respect to the withdrawal to the Secretary of Labor, the Secretary of the Treasury, the plan administrator, and each employee organization representing plan participants.

Interest rate.—In calculating the present value of benefit liabilities for purposes of determining the MBSL, the interest rate used is the lesser of the plan rate for purposes of determining lump sum distributions or generally 120 percent of the rate that would be used by the PBGC for purposes of determining the present value of a lump sum distribution on plan termination.

Sanction.—An excise tax applies if the amount withdrawn from an ongoing plan exceeds the permissible amount. The amount of the tax is 5 percent of the excess withdrawn over the permissible amount if the excess withdrawal is corrected within 90 days; 50 percent of the excess if the withdrawal is not corrected within 90 days, but is corrected within 365 days; and 100 percent if the withdrawal is not corrected within 365 days; and 100 percent for each succeeding 365 days that the withdrawal is not corrected. The employer making the withdrawal is liable for this excise tax.

Effective date.—These provisions apply to withdrawals occurring after the date 90 days after the date of enactment.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

In general.—The Labor and Human Resources Committee amendment generally is the same as the Education and Labor Committee bill with the following exceptions.

Plan provisions.—For purposes of the special rule for plans that on a specified date provided for a distribution of plan assets to the employer upon plan termination, October 9, 1987, is used in lieu of July 1, 1987.

Asset level of terminated plans.—Withdrawals are not permitted if the employer has terminated any plan without assets sufficient to pay benefit liabilities. This prohibition does not apply if the PBGC and plan participants have been made whole for any loss suffered.

Conference agreement

The conference agreement follows the Ways and Means Committee bill and the Finance Committee amendment.

C. TAX TREATMENT OF REVERSIONS

Present law

Reversions are includible in the gross income of the employer and subject to a nondeductible 10-percent excise tax (sec. 4980), except to the extent the reversion is transferred to an employee stock ownership plan (ESOP) either prior to January 1, 1989, or pursuant to a termination occurring prior to January 1, 1989.

House bill

Ways and Means Committee bill

The Ways and Means Committee bill raises the excise tax on reversions to 20 percent. In addition, the bill provides that a reversion from a defined benefit plan that is transferred in a qualified transfer is not includible in the employer's income and is not subject to the excise tax on reversions.

These provisions apply to any reversion received after June 30, 1987, except that the provisions do not apply to any reversion on account of a termination if notice to the PBGC of such termination is provided on or before June 30, 1987.

The bill does not affect the special rules under the Tax Reform Act of 1986 with respect to the ESOP exceptions or with respect to the application of the excise tax on reversions to certain taxpayers.

Education and Labor Committee Bill

Any net assets transferred directly between defined benefit plans maintained by the same employer are not includible in the employ-

er's income and are not subject to the excise tax on reversions. The ESOP exceptions to the income and excise tax are repealed.

The rule permitting tax-free transfers between defined benefit plans is intended as a clarification of present law. The repeal of the ESOP exceptions applies to transactions occurring after July 21, 1987.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

The Labor and Human Resources Committee amendment is the same as the Education and Labor Committee bill, except that the ESOP exceptions are not repealed.

Conference agreement

The conference agreement follows the Finance Committee amendment.

4. TREATMENT OF PLAN TERMINATIONS

Present law

In general

A single-employer defined benefit pension plan may be voluntarily terminated only in a standard termination or in a distress termination. A plan may be terminated in a standard termination only if it has sufficient assets to pay all benefit commitments under the plan. Benefit commitments are greater than the benefits guaranteed by the PBGC, but are less than plan termination liability. Termination liability represents all benefits that have been promised under the plan up to the date of plan termination, and consists of all fixed and contingent liabilities to plan participants and beneficiaries, including liability for benefits in effect on the date of termination that are not protected under section 411(d)(6) of the Code or section 204(g) of ERISA.

A plan with assets insufficient to provide benefit commitments may be terminated in a distress termination only if the PBGC determines that each contributing sponsor and each substantial member of the contributing sponsors' controlled group satisfies at least 1 of 4 distress standards. A substantial member of a controlled group is generally any entity whose assets comprise at least 5 percent of the assets of the controlled group.

Employer liability to participants

If a plan is terminated in a standard termination so that the plan assets are sufficient to satisfy benefit commitments, then the employer has no further liability to plan participants, even if the plan is not sufficiently funded to meet termination liability.

In a distress termination, if there are benefit commitments in excess of PBGC-guaranteed benefits that cannot be paid out of plan assets, then the PBGC is required to appoint an independent fiduciary with respect to a special termination trust maintained for the

benefit of participants. Each contributing sponsor and each member of the controlled group of a contributing sponsor is jointly and severally liable to the termination trust for the lesser of (1) 75 percent of the unfunded benefit commitments in excess of guaranteed benefits, or (2) 15 percent of the value of all benefit commitments under the plan. Benefits may be paid to plan participants from the termination trust before the employer's full liability to the PBGC has been discharged.

Employer liability to PBGC

In a distress termination, if plan assets are insufficient to fund guaranteed benefits, each contributing sponsor and each member of the controlled group of each contributing sponsor is jointly and severally liable to the PBGC for the sum of (1) unfunded guaranteed benefits up to 30 percent of the collective net worth of the entities that are liable; (2) the excess of 75 percent of the unfunded guaranteed benefits over 30 percent of collective net worth; and (3) interest on such amounts from the date of termination.

The PBGC is entitled to a lien of up to 30 percent of the collective net worth of the entities that are liable to the PBGC. Up to this limit, the PBGC's claim has the priority status of a Federal tax claim for bankruptcy purposes. The remainder of the PBGC's claim generally has the lower priority status of an unsecured claim.

Standards for termination

Standard termination.—A plan may be terminated in a standard termination only if the plan has assets sufficient to satisfy benefit commitments. In connection with a standard termination, the plan administrator is required to provide participants and beneficiaries with certain information relating to their benefits.

Distress termination.—In order to terminate a plan in a distress termination, the plan administrator is required to demonstrate that each contributing sponsor and each substantial member of each contributing sponsor's controlled group meets one of the following criteria: (1) a petition in bankruptcy or a State insolvency proceeding seeking liquidation of the entity has been filed and has not been dismissed; (2) a petition in bankruptcy or a State insolvency proceeding has been filed seeking reorganization of the entity, the case has not been dismissed, and the bankruptcy (or other appropriate) court has approved the plan termination; (3) unless a distress termination occurs, the entity will be unable to pay its debts when due and will be unable to continue in business; or (4) the costs of providing pension coverage have become unreasonably burdensome solely as a result of a decline in the workforce.

Information requirements

In connection with a standard or a distress termination, the plan administrator is required to provide certain information to the PBGC, including a certification by an enrolled actuary. Certain information must also be provided to the PBGC or other persons other than at plan termination.

House bill

Ways and Means Committee bill

Employer liability to participants.—Under the Ways and Means Committee bill, the employer's liability to plan participants is increased to the full amount of termination liability following a standard termination. The plan's termination liability is determined as under present law (Code sec. 401(a)(2)), and includes all fixed and contingent liabilities to plan participants and beneficiaries, including liability for benefits in effect on the date of termination that are not protected under section 411(d)(6) of the Code or section 204(g) of ERISA.

Following a distress termination, the contributing sponsor's (and controlled group's) liability to participants is increased to the full amount of the plan's unfunded termination liability to the extent not guaranteed by the PBGC. The PBGC is entitled to recover the full amount of unfunded guaranteed benefits before any amounts are paid from the termination trust to plan participants.

Employer liability to PBGC.—The liability to the PBGC is increased to the full amount of unfunded guaranteed benefits.

Standards for termination

Standard termination.—The required plan asset level for a standard termination is increased to the full level of the plan's termination liability.

Distress termination.—A plan with assets insufficient to provide termination liability is unable to terminate unless the contributing sponsor and each member of the contributing sponsors' controlled group satisfies the criteria for a distress termination.

Under the bill, a reorganization does not qualify as a condition under which a distress termination is permitted. In addition, a distress termination is not available if any person who is a contributing sponsor of the plan or a member of the contributing sponsor's controlled group maintains a plan that is overfunded. For purposes of this rule, a plan is overfunded if the value of plan assets exceeds the plan's termination liability.

Termination charge

No provision.

Replacement plans.—If all liabilities to the PBGC have not been satisfied following a distress termination, then the contributing sponsor (and controlled group members) are precluded from establishing an arrangement under which retirement benefits are provided or providing for further accruals of retirement benefits under any arrangement previously established. The prohibition applies during the 5-year period beginning on the termination date and, to the extent provided in regulations, the 1-year period ending on the termination date.

Security and lien rules for underfunded plans.—The PBGC is authorized to require security in favor of the plan if, as of the close of a plan year (or such other date determined by the PBGC), the level of plan assets does not exceed 70 percent of the termination liability of the plan. The security is to be provided by the contributing

sponsor or, at the request of the PBGC, by a member of the contributing sponsor's controlled group.

If the security is not provided, then a lien arises in favor of the plan in an amount determined by the PBGC. The lien is on all property and rights to property belonging to the person or persons required to provide the security. Rules similar to the rules in section 4068(c), (d), and (e) of ERISA apply with respect to the lien.

Effective date.—Except for the provision relating to security, the provisions are effective for terminations if notice to the PBGC is provided after June 30, 1987, and terminations initiated by the PBGC after June 30, 1987. The provision relating to security is effective with respect to plan years beginning after the date of enactment.

Education and Labor Committee bill

Employer liability to participants.—Same as the Ways and Means Committee bill, except that the bill uses the term "benefit liabilities" instead of "termination liability" (although the definitions are not substantively different), and the bill does not provide that the PBGC is entitled to full recovery before benefits are paid from the termination trust. In addition, under the bill, administrative expenses associated with the termination trust that are incurred before any liability payments have been collected are payable by the persons liable for the payments and are deducted from future payments.

Employer liability to PBGC.—Same as the Ways and Means Committee bill.

Standards for termination

Standard termination.—Same as the Ways and Means Committee bill. In addition, the bill clarifies that the information regarding benefits is to be sent to the same individuals who receive the notice of intent to terminate.

Distress termination.—The bill retains present law, except that the bill provides that a reorganization that has been converted to a liquidation qualifies as a liquidation for purposes of determining whether a distress termination is permitted. In the case of a reorganization, the PBGC is required to be notified in advance that the person intends to request the approval of the termination by the appropriate court. The bill clarifies that the determination of whether the distress criteria have been satisfied is made as of the proposed date of termination.

Termination charge.—In the case of any termination of a single-employer defined benefit plan, the contributing sponsor is to pay to the PBGC a separate termination charge for each participant in the terminating plan based on the deficit of the PBGC. For the period July 1, 1987, through June 30, 1990, the charge is $200 per participant. In the case of a contributing sponsor that terminates a plan in a distress termination and that also maintains a plan with assets in excess of the minimum benefit security level, the per-participant charge is doubled.

Replacement plans.—No provision.

Security and lien rules for underfunded plans.—No provision.

Information requirements.—Information related to the certification by the enrolled actuary in the case of a termination need not be provided in the case of the termination of certain plans funded exclusively by individual insurance contracts or, in a distress termination, if the PBGC determines that the information is not necessary to determine the sufficiency of plan assets or the employer's liability. The information required to be provided in a standard or distress termination must be provided in the case of a termination by the PBGC at the request of the PBGC.

A penalty of up to $1,000 per day is payable to the PBGC for failure to provide required information.

Effective dates.—The provision relating to the termination charge is effective for terminations for which the notice to plan participants is provided on or after July 1, 1987, and terminations by the PBGC initiated on or after July 1, 1987. The other provisions are effective on the date of enactment.

Senate amendment

Finance Committee amendment

Employer liability to participants.—Same as the Ways and Means Committee bill, except that the Finance Committee amendment does not provide that the PBGC is entitled to recover the full amount of unfunded guaranteed benefits before any benefits are paid from the termination trust.

Employer liability to PBGC.—Same as the Ways and Means Committee bill, except that the amendment removes the 30 percent of net worth limit on the PBGC's lien and priority claim.

Standards for termination.—Same as the Ways and Means Committee bill, except that the Finance Committee amendment does not include the provision prohibiting a distress termination if the employer maintains an overfunded plan.

Termination charge.—No provision.

Replacement plans.—No provision.

Security and lien rules for underfunded plans.—Under the amendment, a statutory lien arises in favor of the plan to the extent that, as of the close of a plan year, (1) the plan's assets are less than 70 percent of current liability and (2) the unfunded current liability exceeds $25 million. The unamortized portion of the plan's unfunded old liability amount is disregarded in making these determinations. The lien is on all property and rights to property belonging to the contributing sponsor and the members of the controlled group of the contributing sponsor.

The lien arises on the first day of the plan year following the plan year in which the determination is made, and continues until the close of the plan year in which the plan is not described in (1) and (2) above. If, from one plan year to the next, the level of unfunded current liability increases, the amount of the lien is increased by the amount of the increase in plan underfunding. The employer is required to notify the PBGC when the plan is described in (1) and (2) above.

Rules similar to the rules in section 4068 (c), (d), and (e) of ERISA apply with respect to the lien and the amount on which it is based. As under section 4068(c), a perfected lien is treated as a Federal

tax lien, and an unperfected lien is treated as a Federal tax claim. In addition, any lien created by this provision may be perfected and enforced by the PBGC or, at its direction, by the contributing sponsor or any member of the controlled group of the contributing sponsor.

Information requirements.—No provision.

Effective dates.—The provisions are generally effective for terminations notice to the PBGC for which is provided after October 16, 1987, and terminations initiated by the PBGC after October 16, 1987. The lien provision is effective with respect to plan years beginning after the date of enactment.

Labor and Human Resources Committee amendment

Employer liability to participants.—Same as the Ways and Means Committee bill, except that the amendment does not provide that the PBGC is entitled to full recovery before benefits are paid from the termination trust, and the term "benefit liabilities" is used instead of "termination liability", although the terms are not substantively different.

Employer liability to PBGC.—Same as the Ways and Means Committee bill.

Standards for termination.—Same as the Ways and Means Committee bill, except that the amendment does not contain the provisions relating to distress termination.

Termination charge.—No provision.

Replacement plans.—No provision.

Security and lien rules for underfunded plans.—No provision.

Information requirements.—No provision.

Effective date.—The provisions are effective on the date of enactment.

Conference agreement

Employer liability to participants

The conference agreement follows the Ways and Means Committee and Education and Labor Committee bills and the Finance Committee and Labor and Human Resources Committee amendments by increasing the employer's liability to the full amount of termination liability (sec. 401(a)(2) of the Code). Under the conference agreement, the term "benefit liabilities" is used instead of termination liability.

The conference agreement also repeals the termination trust mechanism for payment of benefits above guaranteed levels. Instead, under the conference agreement, the total amount of the employer's liability is paid to the PBGC. The PBGC pays out a portion of unfunded benefit liabilities in excess of unfunded guaranteed benefits based on the total value of the PBGC's recovery with respect to the total liability of the employer. Amounts paid to participants are allocated in accordance with section 4044.

Employer liability to PBGC

The conference agreement follows the Ways and Means Committee and Education and Labor Committee bills, and the Finance

Committee and Labor and Human Resources Committee amendments.

Standards for termination

Standard termination.—The conference agreement follows the Ways and Means Committee and Education and Labor Committee bills, and the Finance Committee and Labor and Human Resources Committee amendments.

Distress termination.—The conference agreement generally follows the Finance Committee amendment. Under the conference agreement, in the case of a reorganization, a distress termination is not available unless the bankruptcy court (or other appropriate court) determines that, unless the plan is terminated the person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the Chapter 11 reorganization process.

The conference agreement follows the Education and Labor Committee bill with respect to the provisions relating to a reorganization that has been converted to a liquidation, notification to the PBGC, and the date of determination of whether the distress criteria have been satisfied.

Replacement plans

The conference agreement follows the Finance Committee amendment.

Security rules for underfunded plans

The conference agreement generally follows the Finance Committee amendment, with certain modifications. Under the conference agreement, if a plan amendment increasing current liability is adopted, the contributing sponsor and members of the controlled group of the contributing sponsor must provide security in favor of the plan (e.g., a bond) equal to the excess of (1) the lesser of (i) the amount by which the plan's assets are less than 60 percent of current liability, taking into account the benefit increase and the unfunded current liability attributable to prior plan amendments, or (ii) the amount of the benefit increase, over (2) $10 million. The employer must notify the PBGC of the benefit increase before it is effective. As under the Finance Committee amendment, current liability is calculated by disregarding the unamortized portion of unfunded old liability.

Information requirements

The conference agreement follows the Education and Labor Committee bill, except that the amount of the penalty is to reflect the materiality of the failure to provide the required information.

Effective dates.—The provisions are generally effective in the case of terminations notice of which is provided to participants after December 17, 1987, and terminations instituted by the PBGC after December 17, 1987. The provision relating to security in the case of certain plan amendments is effective with respect to plan years beginning after the date of enactment.

5. PBGC PREMIUMS

Present law

Each employer maintaining a single-employer defined benefit pension plan is subject to a flat-rate PBGC premium of $8.50 per participant and beneficiary covered under the plan. No additional premium is charged with respect to participants in underfunded plans. The per-participant PBGC premium is imposed with respect to all single-employer defined benefit plans subject to Title IV of ERISA.

The plan administrator is liable for premium payments.

Any premium income is credited to the single-employer revolving fund.

House bill

Ways and Means Committee bill

The flat-rate per-participant premium is increased to $14.

An additional per-participant premium is charged to the extent that a plan is underfunded. The additional premium is $5.50 per $1,000 of unfunded vested benefits. The maximum additional per-participant premium is $36. Plans with fewer than 100 participants (on a controlled group basis) are exempt from the additional premium for underfunded plans.

The employer maintaining the plan and each member of the controlled group of the employer are jointly and severally liable for premium payments.

The provisions apply to plan years beginning after December 31, 1987.

Education and Labor Committee bill

The flat-rate per-participant premium is increased to $19.

The bill follows the Ways and Means Committee bill with respect to controlled group liability for premium payments and with respect to the effective date.

Senate amendment

Finance Committee amendment

The Finance Committee amendment follows the Ways and Means Committee bill with respect to the flat-rate per-participant premium and is similar to the Ways and Means Committee bill with respect to the additional premium for underfunded plans, except that the additional premium is $6.00 per $1,000 of unfunded current liability. The maximum additional premium is $70, indexed to growth in wages. In addition, the additional premium is reduced for 5 years by $10 for each year (up to 5) preceding the effective date for which the employer made the maximum deductible contribution permitted under present law to the plan.

The amendment is the same as the Ways and Means Committee bill with respect to plans subject to the additional premium, except that the additional premium phases in for plans with 100-150 participants.

The amendment is the same as the Ways and Means Committee bill with respect to controlled group liability for premium payments, except that the plan administrator is also liable for premium payments.

The additional premiums collected under the amendment are credited to a separate revolving fund that cannot be used to pay PBGC administrative expenses or benefits in pre-1988 terminations unless all other PBGC assets are depleted.

The amendment follows the Ways and Means Committee bill with respect to the effective date.

Labor and Human Resources Committee amendment

The flat-rate per-participant premium is increased to $25.

The bill follows the Ways and Means Committee bill with respect to controlled group liability for premium payments and is the same as the Finance Committee bill with respect to the crediting of premiums collected to a separate revolving fund.

The bill follows the Ways and Means Committee bill with respect to the effective date.

Conference Agreement

In general

The conference agreement follows the Ways and Means Committee and Finance Committee bills, with certain modifications.

Flat rate premium

The conference agreement increases the flat-rate per-participant premium to $16.

Additional premium for underfunded plans

Under the conference agreement, the additional premium is $6 per $1,000 of unfunded vested benefits, with a maximium per-participant additional premium of $34. For purposes of determining the value of vested benefits, the interest rate is equal to 80 percent of the yield per annum on 30-year Treasury securities for the month period preceding the plan year.

In addition, if an employer made the maximum deductible contributions to the plan for 1 or more of the 5 plan years preceding the first plan year beginning after December 31, 1987 (i.e., for a calendar year plan, 1983-1987), then the cap on the additional premium is reduced by $3 for each plan year for which such contributions were made. This special rule only applies for the first 5 plan years the premium is in effect.

Small employer exception

The conference agreement follows the Education and Labor Committee bill and Labor and Human Resources amendment.

Liability for premium payments

The conference agreement follows the Finance Committee amendment.

Accounting for additional premium income

The conference agreement follows the Finance Committee amendment, effective for fiscal year 1989.

Effective date.—Except as provided above, the provisions apply to plan years beginning after December 31, 1987.

6. MISCELLANEOUS PROVISIONS

A. Notification of employees

Present law

Under present law, an employer is required to report certain information annually to participants in a pension plan maintained by the employer. This report does not contain specific information relating to the funded status of the plan.

House bill

Ways and Means Committee bill

The report that employees are required to receive annually is required to include a statement of the extent to which the plan is funded.

This provision applies to plan years beginning after December 31, 1987.

Education and Labor Committee bill

No provision.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, except that the requirement only applies to plans that are funded below 70 percent of current liability.

B. STATUTE OF LIMITATION WITH RESPECT TO CERTAIN REPORTS

Present law

Under present law, the statute of limitations with respect to an action commenced under Title I of ERISA for a breach of fiduciary duty begins to run on the date a report is filed from which the plaintiff could reasonably be expected to have obtained knowledge of the breach.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

The bill deletes the provision under which the statute of limitations begins to run on the date a report is filed from which the plaintiff could reasonably be expected to have obtained knowledge of a breach of fiduciary liability.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Education and Labor Committee bill.

This provision applies to reports filed after December 31, 1987.

C. PENALTY FOR FAILURE TO PROVIDE ANNUAL REPORT IN COMPLETE FORM

Present law

Under present law, no separate penalty applies with respect to a plan administrator's failure or refusal to file an annual report.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

The bill provides that the Secretary of Labor may assess a civil penalty of up to $1,000 a day from the date of a plan administrator's failure or refusal to file an annual report. In addition, an annual report that has been rejected is not to be treated as having been filed for purposes of this penalty.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference Agreement

The conference agreement follows the Education and Labor Committee bill, with the clarification that the penalty is to reflect the materiality of the failure.

This provision applies for reports due after December 31, 1987.

D. INTERPRETATION OF PROVISIONS UNDER THE INTERNAL REVENUE CODE AND ERISA

Present law

Under present law, employers may, under certain circumstances, withdraw assets from pension plans prior to plan termination. Under the Code, an employer contribution may be returned if the contribution was conditioned on initial qualification of the plan and the plan does not qualify. Under ERISA, employer contributions may be returned on any denial of qualification, rather than initial qualification.

A recent court case (*Calfee, Halter & Griswold* (88 T.C. No. 35, March 23, 1987)) held that the ERISA standard applied for purposes of the Code, rather than the Code standard.

House bill

Ways and Means Committee bill

The bill would provide that, except to the extent specifically provided in the Code, the Code is to be interpreted as if the provisions of Titles I and IV of ERISA had not been enacted. In addition, the bill specifically rejects the holding in *Calfee, Halter & Griswold.*

The bill does not override or otherwise affect the provisions of Reorganization Plan No. 4.

Education and Labor Committee bill

The Education and Labor Committee bill is similar to the Ways and Means Committee bill, except that Title I of ERISA is amended to permit a return of contributions to an employer if the contribution is conditioned on initial qualification of the plan, if the plan does not qualify initially, and if the application for determination relating to initial qualification is filed by the due date of the employer's return for the taxable year in which the plan was adopted. The bill clarifies that a determination by the Secretary of the Treasury under the Code is not prima facie evidence on issues relating to certain parts of Title I of ERISA.

The provision is effective on the date of enactment.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill with respect to the rejection of the holding in *Calfee, Halter & Griswold.* The conference agreement also provides that, except to the extent provided by the Code or determined by the Secretary of the Treasury, Titles I and IV of ERISA are not applicable in interpreting the Code. As under the Ways and Means Committee bill, the conference agreement does not override or otherwise affect the

provisions of Reorganization No. 4. Nor is it intended that the bill preclude coordination between the Department of Labor, the PBGC, and the Treasury Department on issues of mutual jurisdiction. These provisions are a clarification of present law.

The conference agreement follows the Education and Labor Committee bill with respect to the effect on Title I of ERISA of a determination by the Secretary of the Treasury under the Code (a clarification of present law) and with respect to conditioning contributions only on initial qualification, effective on the date of enactment.

E. SANCTIONS FOR PROHIBITED TRANSACTIONS THAT ARE CONTINUING IN NATURE

Present law

Under present law, under ERISA, the penalty imposed with respect to a prohibited transaction is 5 percent of the amount involved and, if the prohibited transaction is not corrected within a certain period of time, 100 percent of the amount involved.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

The bill clarifies that the penalty imposed with respect to a prohibited transaction is 5 percent of the amount involved in each prohibited transaction and, if the transaction is not corrected within a certain period of time, 100 percent of the amount involved in each prohibited transaction.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Education and Labor Committee bill.

The provision is a clarification of present law.

F. MULTIEMPLOYER PLANS

Present law

Within certain limits, the PBGC guarantees nonforfeitable benefits under multiemployer plans.

Under present law, a penalty of up to $100 per day is payable to the PBGC for failure to provide certain information required with respect to multiemployer plans.

The PBGC is to be served with a complaint in certain litigation involving multiemployer plans.

House bill

Ways and Mean Committee bill

Some provisions of the bill do not apply to multiemployer plans.

Education and Labor Committee bill

For purposes of determining whether or not benefits are nonforfeitable and, therefore, are guaranteed by the PBGC, the bill conforms the treatment of qualified preretirement survivor annuities for multiemployer plans to the treatment of such annuities in the case of single-employer plans. Thus, for purposes of the guarantee, a qualified preretirement survivor annuity is not treated as forfeitable solely because the participant has not died as of the date of plan termination or insolvency.

The $100 per day penalty for failure to provide certain information to the PBGC with respect to a multiemployer plan is increased to $1,000 per day.

Under the bill, the plan sponsor of a multiemployer plan is to serve the PBGC with any complaint, district court opinion, notice of appeal, or court of appeals decision with respect to certain litigation involving the plan sponsor.

Senate amendment

Finance Committee amendment

The provisions of the bill do not apply to multiemployer plans.

Labor and Human Resources Committee amendment

Some of the provisions of the bill do not apply to multiemployer plans.

Conference agreement

The conference agreement follows the Finance Committee bill.

G. PLAN INVESTMENT IN EMPLOYER SECURITIES

Present law

Ten-percent limit

A plan subject to ERISA may not acquire or hold an employer security other than qualifying employer securities. Except in the case of an individual account plan, a plan may not acquire qualifying employer securities if, after the acquisition, the total fair market value of such securities and qualifying real property would exceed 10 percent of the assets of the plan.

Definition of qualifying employer security

Qualifying employer securities are stock and marketable obligations. An obligation is not a marketable obligation unless: (1) not more than 25 percent of the obligations issued are held by the plan, (2) at least 50 percent of the issue is held by persons independent of the issuer, and (3) not more than 25 percent of the assets of the plan are invested in obligations of the employer.

House bill

Ways and Means Committee bill

Ten-percent limit.—No provision.
Definition of qualifying employer security.—No provision.

Education and Labor Committee bill

Ten-percent limit.—The term "eligible individual account plan" does not include a plan that would otherwise be an individual account plan if the plan is taken into account in determining the benefits payable to a participant under any defined benefit plan. An arrangement consisting of a defined benefit plan and a plan that would otherwise be an individual account plan but for the fact that the plan is taken into account in determining the benefits payable to a participant under the defined benefit plan (a "floor-offset arrangement") is treated as a single plan for purposes of the 10-percent limit.

Definition of qualifying employer security.—In the case of a plan other than an individual account plan, stock is considered a qualifying employer security only if (1) not more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition by the plan is held by the plan, and (2) at least 50 percent of the aggregate amount of such stock is held by persons independent of the issuer.

Effective date.—Acquisitions of employer securities after February 19, 1987, other than pursuant to a binding contract in effect on such date. Plans that, on February 19, 1987, hold employer securities that do not meet the new requirements or that acquire such securities pursuant to a binding contract in effect on such date have until January 1, 1993, to divest themselves of such securities.

Senate amendment

Finance Committee amendment

Ten-percent limit.—No provision.
Definition of qualifying employer security.—No provision.

Labor and Human Resources Committee amendment

Ten-percent limit.—No provision.
Definition of qualifying employer security.—No provision.

Conference Agreement

The Conference Agreement follows the Education and Labor Committee bill, with modifications of the effective dates. The provision regarding the ten-percent limit on employer securities is effective with respect to arrangements established after December 17, 1987. The rule does not apply to arrangements established on or before December 17, 1987. The effective date of the provision regarding the definition of qualifying employer security, except that December 17, 1987, is substituted for February 19, 1987.

H. INTEREST ON EMPLOYEE CONTRIBUTIONS

Present law

Under present law, mandatory employee contributions to a defined benefit pension plan are required to be credited with interest at a rate of 5 percent per year. The Secretary of the Treasury has the authority to adjust this 5-percent rate under appropriate circumstances.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

No provision.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

Under the amendment, the 5-percent rate is replaced by a rate equal to 120 percent of the mid-term applicable Federal rate (AFR) (as in effect for the first of the plan year). The Secretary of the Treasury does not have the authority to alter this rate.

The provision is effective on the date of enactment.

Conference agreement

The conference agreement follows the Labor and Human Resources Committee amendment, effective for years beginning after December 31, 1987.

1. STUDY OF EVENT-CONTINGENT PENSION BENEFITS

Present law

No provision.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

No provision.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

The Secretary of Labor is required to study the effect of event-contingent pension benefits on private pension plans and, not later than February 1, 1988, report the results of this study, together

with legislative recommendations, to the House Committee on Education and Labor and the Senate Committee on Labor and Human Resources.

Conference agreement

The conference agreement follows the Ways and Means Committee and Education and Labor Committee bills and the Finance Committee amendment.

VI. PROVISIONS RELATING TO PENSION PLAN PORTABILITY

A. Portable pension plans

Present law

Portable pension plans, as defined under the Education and Labor Committee bill, do not exist under present law. However, under present law, distributions from qualified plans and IRAs may, under certain circumstances, be rolled over to another qualified plan or IRA. In addition, benefits under a plan may under certain circumstances be transferred to another plan.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

Definition.—Under the Education and Labor Committee bill, a portable pension plan is a rollover individual retirement arrangement (IRA) that (1) satisfies the simplified employee pension (SEP) rules (sec. 408(k) of the Code) with respect to employer contributions, (2) meets certain distribution rules, and (3) meets certain portability rules. A rollover IRA is an IRA that accounts separately for rollovers, basis, and certain transfers.

Distribution requirements.—For married participants, distributions under a portable pension plan are required to be in the form of a 50-percent qualified joint and survivor annuity, unless the participant elects otherwise and the spouse consents. (This rule does not apply to amounts transferred from other plans with respect to which the spouse was not the beneficiary.) In other cases, distributions under a portable pension plan are required to be in the form of a single life annuity, unless the participant elects otherwise. Subject to the spousal consent rule, a participant may designate the form of distribution. All distributions are subject to the minimum distribution rules (Code sec. 408(a)(6) and (b)(3)).

Portability requirements.—A portable pension plan meets the portability requirements if it (1) allows transfers (subject to spousal consent if spousal consent would be required with respect to a distribution) to other portable pension plans and, under certain circumstances, to qualified plans, (2) accepts rollovers and transfers from simplified employee pensions (SEPs), qualified plans, and tax-sheltered annuities, and (3) accepts transfers from portable pension plans.

Investment options.—A portable pension plan is required to (1) allow an option of investing principally in cash and U.S. securities,

and (2) if a participant does not elect otherwise, invest the participant's account in cash, U.S. securities, or similarly safe investments determined under regulations.

Notices.—The administrator of a portable pension plan is required to provide participants with a written explanation of the tax treatment of a distribution and of the participant's and spouse's rights with respect to the form of the distribution.

Prototype plan.—The Secretary of Labor and the Secretary of the Treasury are to prescribe a prototype portable pension plan.

Effective date.—The provisions apply to taxable years beginning after December 31, 1991.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

B. ROLLOVERS AND TRANSFERS

1. Qualified plan and tax-sheltered annuity contract distributions

Present law

Distributions from a qualified plan may, under certain circumstances, be rolled over into an IRA or another qualified plan. Distributions from a tax-sheltered annuity contract may, under certain circumstances, be rolled over into an IRA or another tax-sheltered annuity contract. With respect to both qualified plans and tax-sheltered annuity contracts, spousal beneficiaries may only roll over amounts into IRAs.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

Distributions from qualified plans or tax-sheltered annuity contracts may only be rolled over into another qualified plan or tax-sheltered annuity contract, respectively, or into a portable pension plan, and may not be rolled over to an IRA. Spousal beneficiaries may only roll over amounts into portable pension plans.

This provision applies to taxable years beginning after December 31, 1991.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

2. Distributions from portable pension plans

Present law

Portable pension plans, as defined under the Education and Labor Committee bill, do not exist under present law.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

Distributions from portable pension plans may not be rolled over to any other type of plan; certain tax-free transfers from portable pension plans are permitted.

This provision applies to taxable years beginning after December 31, 1991.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

3. Transfers and rollovers from qualified plans and tax-sheltered annuities

Present law

Transfers from qualified plans to IRAs are not permitted. A distribution from a qualified plan of employee contributions may not be rolled over to any plan or IRA. Similar rules apply to tax-sheltered annuities.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

Tax-free transfers from qualified plans to portable pension plans may be made; such transfers may include employee contributions. Distributions of employee contributions from qualified plans may be rolled over into portable pension plans. Employee contributions may be transferred tax-free from a portable pension plan to a qualified plan. Similar rules apply to tax-sheltered annuities.

These provisions apply to taxable years beginning after December 31, 1991.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

4. Life insurance contracts

Present law

An IRA may not invest in a life insurance contract.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

IRAs may hold life insurance contracts that are transferred from a qualified plan or tax-sheltered annuity.

This provision applies to taxable years beginning after December 31, 1991.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

C. QUALIFIED PLAN DISTRIBUTIONS

1. Permissible distributions

Present law

Distributions from a pension plan generally may be made only on account of plan termination or the employee's separation from service, disability, death, or attainment of normal retirement age. Profit-sharing and stock bonus plans generally may permit distributions after the expiration of a stated period of time (2 years or longer) or after the occurrence of a stated event. Special rules apply to section 401(k) plans and tax-sheltered annuities.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

A qualified plan may not permit a distribution not described below:

(a) Direct transfers to another plan or to a portable pension plan selected by the participant (or by the plan administrator if the participant makes no selection, with an exception allowing cash distributions of certain small benefits if the participant makes no selection).

(b) Any distribution of employee contributions.

(c) Any distribution made on or after the employee attains 59-½, dies, or separates from service after attainment of age 55.

(d) Any distribution attributable to the employee being disabled.

(e) A distribution after the employee separates from service in a series of substantially equal periodic payments over the life (or life expectancy) of the employee or over the joint lives (or joint life expectancies) of the employee and the employee's beneficiary.

(f) A distribution of a deductible dividend (Code sec. 404(k)).

(g) A distribution of stock issued by the employer maintaining the plan.

(h) A distribution upon the occurrence of a hardship of the employee.

(i) A distribution of the amount of medical expenses the employee could deduct (assuming the employee itemizes).

(j) A distribution to an alternate payee pursuant to a qualified domestic relations order.

Generally, this provision applies to plan years beginning after December 31, 1991. With respect to collectively bargained plans, this provision does not apply to employees covered by the collective

bargaining agreements in plan years beginning before the later of (1) the termination of the last of the collective bargaining agreements (without regard to extensions on or after the date of enactment), or (2) January 1, 1992. The provision does not apply to any individual who attained age 50 before January 1, 1986.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

2. Consent requirements

Present law

If the present value of an employee's vested accrued benefit exceeds $3,500, the benefit may not be immediately distributed without the consent of the employee and, in certain cases, the employee's spouse.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

The consent requirements do not apply to a transfer of an employee's entire benefit (or entire benefit reduced by distributed employee contributions) to a portable pension plan or certain other qualified plans.

The effective date of this provision is the same one applicable to the provision described above with respect to permissible distributions.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

3. Plan mergers and transfers

Present law

Generally, a participant's benefit may not be reduced by a merger or consolidation of plans or by a transfer of plan assets or liabilities.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

The prohibition on reduction of a participant's benefit is not violated by a transfer of a participant's benefit to a portable pension plan or to a qualified plan providing the participant with the benefit distribution options required for a portable pension plan.

The effective date of this provision is the same one applicable to the provision described above with respect to permissible distributions.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

4. Reduction in accrued benefit

Present law

Generally, a plan amendment may not reduce a participant's accrued benefit under a qualified plan. Certain forms of distributions are treated as part of a participant's accrued benefit.

House bill

Ways and Means Committee bill .

No provision.

Education and Labor Committee bill

The prohibition on reduction of a participant's benefit is not violated by a transfer of a participant's benefit to a portable pension plan or to a qualified plan providing the participant with the benefit distribution options required for a portable pension plan.

The effective date of this provision is the same one applicable to the provision described above with respect to permissible distributions.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

5. Vesting service

Present law

A qualified plan generally may disregard service for vesting purposes if the benefit earned for such service has been distributed.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

The Education and Labor Committee bill generally allows service to be disregarded if the benefit earned for such service has been transferred.

The effective date of this provision is the same one applicable to the provision described above with respect to permissible distributions.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

D. SEPS

1. ERISA

Present law

SEPs that are plans generally are subject to the requirements of Title 1 of the Employee Retirement Income Security Act of 1974 (ERISA).

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

All SEPs are subject to ERISA with special rules with respect to participation, vesting, and funding to conform to the tax rules applicable to SEPs. In addition, the Secretary of Labor is to prescribe special means for SEPs to comply with the reporting and disclosure requirements applicable under ERISA.

This provision applies to taxable years beginning after December 31, 1991.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

2. Distributions

Present law

Under the Code, the employer may not prohibit withdrawals from a SEP.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

SEPs generally are subject to the same distribution rules applicable to portable pension plans.

This provision applies to SEPs established after December 31, 1991.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

E. SALARY REDUCTION UNDER SEPS

1. SEP participation requirements

Present law

Under the participation requirements, a SEP does not qualify unless an employer contribution is made on behalf of each employee who meets certain age, service, and compensation requirements.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

Employer contributions need not be made on behalf of an employee who is not employed on the last day of the year, unless an employer contribution was made for the employee in the preceding year. Also, if an employer uses the alternative means of allowing elective contributions described in (2) below, the participation requirements may not exclude any employee who has attained age 21 with 1 year of service from any SEP of the employer, subject to the year-end employment rule.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

2. Elective contributions

Present law

If certain requirements are satisfied, contributions that an employee had the right to receive in cash may be made to a SEP. Generally, the requirements are as follows:

(a) The employer may not be a State or local government or a tax-exempt organization.

(b) The employer may not have had more than 25 employees at any time during the preceding year.

(c) The elective contributions are required to satisfy certain nondiscrimination rules without regard to nonelective contributions made for the same employees. (For purposes of these

nondiscrimination rules, no more than $200,000 of compensation may be taken into account.)

(d) All employees who satisfy the participation requirements are required to be entitled to make an elective contribution.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

The Education and Labor Committee bill establishes an alternative means of allowing elective contributions to a SEP. This alternative means is available if the following requirements are satisfied:

(a) The employer may not be a State or local government or a tax-exempt organization.

(b) The employer may not be maintaining a qualified retirement plan for any employee meeting certain age and service requirements. (There is, however, no requirement with respect to the size of the employer.)

(c) The elective contributions are subject to a limit that functions in a manner similar to the present-law nondiscrimination rules, but takes nonelective contributions into account. (There is no limit on the amount of compensation that may be taken into account for this purpose.)

(d) All employees receiving an employer contribution under a SEP are required to be eligible to make an elective contribution.

This provision applies to taxable years beginning after December 31, 1991.

Senate amendment

Finance Committee Amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

3. Nondiscriminatory contributions

Present law

Nonelective employer contributions to SEPs will satisfy the nondiscrimination rules if they bear a uniform relationship to employees' compensation (up to $200,000). In addition, certain integration with social security is permitted.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

If an employer uses the alternative means of allowing elective contributions, integration is not permitted in any SEP of the employer.

This provision applies to taxable years beginning after December 31, 1991.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

F. LINE OF BUSINESS RULE FOR SEPS

Present law

The nondiscrimination rules applicable to qualified plans, tax-sheltered annuities, and statutory employee benefit plans may be applied separately to separate lines of business or operating units of an employer.

House bill

Ways and Means Committee bill

No provision.

Education and Labor Committee bill

If an employer maintains a qualified plan or SEP in each separate line of business or operating unit, the Secretary of Treasury may by regulation provide that such employer may apply the SEP requirements separately to each such separate line of business or operating unit.

This provision applies to taxable years beginning after December 31, 1991.

Senate amendment

Finance Committee amendment

No provision.

Labor and Human Resources Committee amendment

No provision.

Conference agreement

The conference agreement follows the Ways and Means Committee bill, the Finance Committee amendment, and the Labor and Human Resources Committee amendment.

E.—MISCELLANEOUS PROVISIONS

1. TRUST FUNDS AND OTHER FEDERAL FUNDS MADE WHOLE

(Section 9501 of House bill)

Present law

During a period when sufficient authority under the current public debt limit precludes issuance of Federal debt obligations, required investments of surplus balances of Federal trust and other funds cannot be made on a timely basis. As a consequence, the affected funds also are unable to earn income on their investable funds, and their reserves do not grow as they otherwise would. Legislation usually has been enacted later to make the funds whole. Legislation has been enacted that provides permanent authority for the Secretary of the Treasury to make retroactive investments and interest payments to the Civil Service Retirement and Disability Trust Fund and the Thrift Savings Fund of the Federal Employees Retirement System.

House bill

The Secretary of the Treasury is required to make retroactive investments and interest payments to each trust fund and other Federal fund which was denied such financial transactions during a period when sufficient debt limit authority did not exist to allow such transactions. Additionally, the Secretary is required to credit income lost because of inability to invest or reinvest amounts held in demand deposit obligations of the State and Local Government Series (SLGS).

Effective date.—The amendment applies to periods when debt issuance was suspended that began on or after July 18, 1987. For debt issuance suspension periods that began on July 18, 1987, and ended before the date of enactment, the period is treated as though ended on the date of enactment; thus, the Secretary is given authority to make the necessary investment and interest adjustments retroactive from the date of enactment to July 18, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification that makes the restoration of foregone investments and interest earnings retroactively only. Thus, the conference agreement requires that the Secretary of the Treasury make the necessary adjustments of investments and interest payments on behalf of all affected federal trust funds, demand deposit SLGS, and all other federal funds retroactive from the date of enactment to July 18, 1987.

The authority to make such adjustments does not apply to a future debt issuance suspension period.

2. EXTENSION OF PROGRAM FOR IRS COLLECTION OF NONTAX DEBTS OWED TO FEDERAL AGENCIES

Present law

Certain Federal agencies are authorized to inform the IRS that a person (who has received proper notification from the agency) owes a past due, legally enforceable, debt to the agency. The IRS then must reduce the amount of any tax refund due the person by the amount of the debt and pay that amount to the agency. This program is scheduled to expire after December 31, 1987.

Under Treasury regulations, the debt collection program applies with respect to refunds due individuals but not refunds due corporations.

House bill

No provision.

Senate amendment

The Senate amendment extends the tax refund offset program for three years (i.e., through December 31, 1990). In addition, the amendment expands the program so that: (1) it applies to debts owed to all (not just certain) Federal agencies, and (2) it applies to debts owed by either individuals or corporations.

The IRS and GAO are required to report to Congress by April 1, 1989, on the effects of the program on voluntary tax compliance.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that the tax refund offset program is extended for six months (i.e., through June 30, 1988).

REPEAL LIMITATION ON LONG-TERM BONDS

(Section 9501 of House bill)

Present law

The rate of interest that may be paid on a United States bond, which is defined as an obligation with more than 10 years to maturity when issued, may not exceed 4¼ percent. An exception is provided which allows the issue of up to $250 billion on bonds with interest rates above the statutory ceiling to be held by the general public.

House bill

The 4¼ percent limitation on the rate of interest on U.S. bonds is repealed.

Effective date.—The amendment is effective on the date of enactment.

Senate amendment

No Provision.

Conference agreement

The conference agreement increases the amount of long-term bonds which may be issued under the exception to the 4¼ percent limitation on the interest rates paid on such bonds by $20 billion to a total of $270 billion.

F.—PROVISIONS RELATING TO THE CUSTOMS SERVICE AND OTHER TRADE AGENCIES

1. CUSTOMS SERVICE USER FEES

(Section 9401 of House bill; Section 6593 of Senate amendment)

Present law

As enacted in the Omnibus Budget Reconciliation Act of 1986, an ad valorem user fee is applied to all formal entries of merchandise imported for consumption in the amount of 0.22 percent during fiscal year 1987, dropping to the lesser of 0.17 percent or the rate which will provide revenue equal to the appropriated level of Customs' commercial operations in fiscal year 1988, and expiring September 30, 1989. The fee does not apply to articles classifiable in schedule 8 of the Tariff Schedules (including products containing U.S. components which are classifiable in item 807.00 of the Schedules and U.S. articles returning to the United States after having been repaired (item 806.20) or processed (806.30) abroad).

House bill

Amends the customs user fee provisions by—

(a) extending the expiration date for one additional year, until September 30, 1990;

(b) restoring the original fee level of 0.22 percent through September 30, 1988, at which time it would be adjusted to the lesser of 0.22 percent or the rate which would provide revenue approximating the appropriated level of Customs' commercial operations;

(c) precluding Customs from assessing an annual fee on operators of foreign trade zones and customs bonded warehouses;

(d) modifying the schedule 8 exemption so that for items 806.30 and 807.00, only the value of U.S. components or materials would be exempt from the user fees;

(e) requiring customs services to be "adequately provided" for the clearance or preclearance of vessels, vehicles, aircraft, or passengers without additional charges other than the user fees;

(f) clarifying that user fees designated to reimburse an appropriation for overtime shall be reimbursed directly without being subject to apportionment (Customs would also be precluded from taking steps to modify regular work shifts);

(g) initiating a GAO study concerning Customs' Centralized Cargo Examination Station (CES) program; and

(h) authorizing refunds of user fees for vessel operators who were entitled to such refunds under section 1893(g)(2) of the Tax Reform Act of 1986 but missed the filing deadline, if application is made within 90 days after enactment.

Effective date.—These provisions are effective on the date of enactment, except for paragraphs (a), (b), (d), and (e), which are effective 15 days after date of enactment, and paragraph (f), which is effective on October 1, 1987.

Senate amendment

Amends the customs user fee provisions by—

(a) extending the expiration date for one additional year, until September 30, 1990;

(b) precluding Customs from assessing an annual fee on operators of foreign trade zones and customs bonded warehouses;

(c) modifying the schedule 8 exemption so that for items 806.30 and 807.00, only the value of U.S. components or materials would be exempt from the user fees;

(d) specifying that fees are to be treated as receipts offsetting expenditures of salaries and expenses of commercial operations; and

(e) clarifying that such fees are to be deposited in the same dedicated account.

Effective date.—Effective 15 days after enactment except for paragraph (i), which is effective on October 1, 1990, and paragraph (j), which is effective on October 1, 1988.

Conference agreement

The conferees agreed to drop the House provision which would have restored the original fee level of 0.22 percent for one year and increase the ceiling in later years to that level. Thus, the fee level will continue to be 0.17 percent in fiscal year 1988 and the ceiling will continue to be 0.17 percent in future years. The remaining House and Senate users fee provisions were merged by accepting the following provisions:

(1) the Senate provision extending the expiration date for one additional year, until September 30, 1990;

(2) the House provision precluding Customs from assessing an annual fee on operators of foreign trade zones and customs bonded warehouses;

(3) the House provision modifying the schedule 8 exemption so that for items 806.30 and 807.00, only the value of U.S. components or materials would be exempt from the user fees;

(4) the House provision requiring customs services to be "adequately provided" for the clearance or preclearance of vessels, vehicles, aircraft, or passengers without additional charges other than the user fees;

(5) the House provision clarifying that user fees designated to reimburse an appropriation for overtime shall be reimbursed directly without being subject to apportionment (Customs would also be precluded from taking steps to modify regular work shifts);

(6) the House provision requiring initiation of a GAO study concerning Customs' Centralized Examination Station (CES) program. Further, this provision requires the suspension of the operation of the CES program at airports until after the study is complete, and the further expansion of the program at any

airports or seaports unless at least 90 days advance notice is given to the Committees;

(7) the Senate provision specifying that fees are to be treated as receipts offsetting expenditures of salaries and expenses of commercial operations except that the delayed effective date was deleted;

(8) the Senate concept clarifying that such fees are to be deposited in the same dedicated account; and

(9) the House provision authorizing refunds of user fees to be authorized for vessel operators who were entitled to such refunds under section 1893(g)(2) of the Tax Reform Act of 1986 but missed the filing deadline, if application is made within 90 days after enactment.

With regard to the House provision relating to the CES program, the Customs Service is precluded from reducing staffing levels at airports while this suspension is in effect. During the pendency of the CES study and until such time as a decision is made as to the advisability of the CES program, the Committees will closely monitor Customs' ongoing utilization cf personnel at airports at which CES programs are being delayed or terminated. This monitoring is intended to insure that Customs' passenger and cargo processing not be adversely impacted or delayed, that Customs personnel are being utilized as efficiently and effectively as possible, and that Customs is not taking any retaliation against the industry for drawing the attention of the Committee to this important matter.

2. INTERNATIONAL TRADE COMMISSION AUTHORIZATION OF APPROPRIATIONS

(Section 9402 of House bill)

Present law

Fiscal year 1987 appropriation—$33,900,000.

House bill

Provides two-year authorizations as follows:

Fiscal year 1988—$35,386,000.

Fiscal year 1989—$36,730,000.

Effective date.—October 1, 1987.

Senate amendment

No provision (section 701 of Senate amendment to H.R. 3 provides for an authorization for fiscal year 1988—$35,386,000).

Conference agreement

The conferees agreed to the House provision regarding the fiscal year 1988 authorization but dropped the authorization for fiscal year 1989.

3. CUSTOMS SERVICE AUTHORIZATION OF APPROPRIATIONS

(Section 9403 of House bill)

Present law

Fiscal year 1987 appropriation—$1,019,435,000.

House bill

Provides two-year authorizations as follows:

Fiscal year 1988—$1,081,501,000 ($348,192,000 for noncommercial operations; $615,000,000 for commercial operations, $171,857 of which is earmarked solely for payment on a contract for automatic license plate reader; and $118,309,000 for operations and maintenance of the air interdiction program.

Fiscal year 1989—$1,138,752,000 ($381,819,000 for noncommercial operations; $630,865,000 for commercial operations; and $126,068,000 for operations and maintenance of the air interdiction program)).

Effective date.—October 1, 1987.

Senate amendment

No similar provision. (Section 702 of Senate amendment to H.R. 3 provides as follows:

Fiscal year 1988—$1,035,211,000 ($358,000,000 for noncommercial operations; $559,000,000 for commercial operations; and $118,000,000 for operations and maintenance of the interdiction program).

Section 702 of the Senate amendment further:

(a) Requires the Customs Service to notify the Congress at least 180 days prior to taking any action that would" result in any significant reduction in force of employees other than by attrition; result in any significant reduction in hours of operation or services rendered at any Customs office or port of entry; eliminate or relocate any office of the Customs Service; eliminate any port of entry; or significantly reduce the number of employees assigned to any office or port of entry.

(b) Establishes a customs private sector advisory committee to advise the Secretary of the Treasury on matters relating to the commercial operations of the Customs Service. The committee is to consist of 20 members representative of the individuals and firms affected by the commercial operations of the Customs Service, a majority of whom may not belong to the same political party.)

Conference agreement

The conferees agreed to accept the House provision with an amendment deleting the fiscal year 1989 authorization and adding two additional provisions. The first requires the Customs Service to notify the Congress at least 180 days prior to taking any action that would result in any significant reduction in force of employees other than by attrition; result in any significant reduction in hours of operation or services rendered at any Customs office or port of entry; eliminate or relocate any office of the Customs Service; eliminate any port of entry; or significantly reduce the number of employees assigned to any office or port of entry.

The second provision adopted by the conferees would establish in lieu of the existing user fee advisory committee a new private sector advisory committee with a broader mandate to advise the

Secretary of the Treasury on matters relating to the commercial operations of the Customs Service.

4. U.S. TRADE REPRESENTATIVE

(Section 9404 of House bill)

Present law

Fiscal year 1987 appropriation—$13,300,000.

House bill

Provides two-year authorizations as follows:
Fiscal year 1988—$15,141,000.
Fiscal year 1989—$15,514,000.
Effective date.—October 1, 1987.

Senate amendment

No similar provision. (Section 703 of Senate amendment to H.R. 3 provides as follows:

Fiscal year 1988—$15,348,000, of which $1 million is to remain available until expended and $100,000 shall be used for a full-time position for a Director of Chinese Affairs and a Deputy Director of Japanese Affairs.)

Conference agreement

The conferees agreed to the House provision with an amendment to authorize a total appropriation for the Office of the U.S. Trade Representative of $15,172,000 for fiscal year 1988 and to delete the authorization for fiscal year 1989.

The authorization level for fiscal year 1988 represents the most recent revised USTR budget request, as amended since passage of the House and Senate provisions, of $15,072,000 plus the additional $100,000 included in the Senate amendment.

The conferees note that the original USTR budget request submitted to the Office of Management and Budget and the appropriation level approved by the House Committee on Appropriations for fiscal year 1988 were considerably higher than the amounts authorized by either the House or the Senate. The Department of State is no longer making funds available to cover a portion of USTR's travel expenses overseas to meetings of international trade organizations. The decline in the value of the U.S. dollar since original budget estimates were made has also reduced the funds that would be available to the USTR for expenses of the delegation in Geneva that must be paid in Swiss francs.

The conferees believe it essential that the USTR maintain adequate resources to fulfill its statutory primary responsibility within the Executive branch for the development and coordination of U.S. trade policy and for the conduct of trade negotiations. In particular, staff and other resource support are necessary to represent U.S. interests and lead role in the Uruguay Round of Multilateral Trade Negotiations and to deal with ongoing bilateral trade issues and negotiations involving, for example, Japan, the European Communities, Canada, China, and other major developing countries.

The conferees have added $100,000 to the fiscal year 1988 authorization request as a minimal amount necessary to meet these needs.

TITLE X—REVENUES

CONTENTS OF REVENUE PROVISIONS (TITLE X)

PART 1. REVENUE-INCREASE PROVISIONS

I. Individual Tax Provisions

A. INCOME TAX PROVISIONS

1. Deny eligibility of overnight camp expenses for child and dependent care credit

Present law

An income tax credit is available for up to 30 percent of a limited dollar amount of employment-related child and dependent care expenses for a child or other dependent who is under the age of 15, or a physically or mentally incapacitated dependent or spouse (sec. 21).

Eligible employment-related expenses are limited to $2,400 ($4,800 if there are two or more qualifying individuals). The 30-percent credit rate is reduced by one percentage point for each $2,000 (or fraction thereof) of AGI above $10,000, but not below 20 percent for AGI above $28,000.

Expenses eligible for the credit include costs incurred by the taxpayer for day care, nursery school, a housekeeper or other home care, and summer camps, including overnight camps.

House bill

Under the House bill, expenses incurred by a taxpayer for an overnight camp are ineligible for the child and dependent care credit. The provision is effective for taxable years beginning on or after January 1, 1988.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

2. Limitation on deduction for qualified residence interest

Present law

Qualified residence interest (i.e., interest on debt secured by a principal or second residence) is deductible notwithstanding the general rule making personal interest nondeductible. Qualified residence interest is limited to interest on debt up to the amount of the cost of the residence (including improvements), plus debt for educational and medical expenses (up to fair market value).

It is not clear under present law that mobile homes used on a transient basis and boats are specifically excluded from the definition of a second residence.

House bill

The House bill provides that qualified residence interest is limited to (1) debt to acquire or substantially improve a principal or second residence (up to a total debt of $1 million), plus (2) other

debt (not in excess of $100,000) secured by a principal or second residence.

Mobile homes used on a transient basis and boats cannot qualify as a second residence.

The provisions apply to taxable years beginning after December 31, 1987. Indebtedness incurred on or before October 13, 1987 (including certain refinancings of that indebtedness) is grandfathered.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill except that the agreement does not contain the provision in the House bill relating to boats and mobile homes.

The conferees anticipate that Treasury regulations will be issued under section 6050H requiring reporting by mortgage interest recipients of any information necessary to enforce the limitation on qualified residence interest.

3. One-year delay in application of two-percent floor to indirect deductions through a regulated investment company

Present law

For taxable years beginning after December 31, 1986, miscellaneous itemized deductions generally are allowable only to the extent that they exceed two percent of the taxpayer's adjusted gross income (sec. 67). The two-percent floor applies with respect to indirect deductions through certain pass-through entities, including regulated investment companies (RICs), commonly called "mutual funds." The two-percent floor does not apply with respect to certain other pass-through entities, including real estate investment trusts, cooperatives, and certain trusts and estates.

House bill

No provision.[1]

Senate amendment.

No provision.

Conference agreement

Under the conference agreement, the two-percent floor applies to indirect deductions through a publicly offered RIC only for taxable years beginning after December 31, 1987.

A publicly offered RIC is a RIC, the shares of which are (1) continuously offered pursuant to a public offering (within the meaning of sec. 4 of the Securities Act of 1933, as amended), (2) regularly traded on an established securities market, or (3) held by or for no fewer than 500 persons at all times during the taxable year. The provision authorizes the Treasury to prescribe regulations decreas-

[1] Subtitle C of title X of the House bill contains a provision under which the two-percent floor does not apply to indirect deductions with respect to publicly offered RICs. Subtitle C provisions generally are not included in the conference agreement.

ing the minimum 500-shareholder requirement in the case of RICs that experience a loss of shareholders through net redemptions of their shares.

The provision is effective for taxable years beginning after December 31, 1986.

B. EMPLOYEE BENEFIT PROVISIONS

1. Limitation on taxable benefit option under cafeteria plan

Present law

Under present law, compensation generally is taxable to employees when actually or constructively received. An amount is constructively received by a taxpayer if it is made available to the taxpayer or the taxpayer has an election to receive such amount.

There are various exceptions to this basic principle of constructive receipt. Under one exception, no amount is included in the income of a participant in a cafeteria plan meeting certain requirements solely because, under the plan, the participant has an election to receive a taxable benefit (sec. 125). Nontaxable benefits that may be available under a cafeteria plan include, for example, health coverage, group-term life insurance, and dependent care assistance. The cafeteria plan exception from the principles of constructive receipt generally also applies for purposes of the Federal Insurance Contribution Act (FICA) and the Federal Unemployment Tax Act (FUTA).

House bill

Under the House bill, the cafeteria plan exception to the constructive receipt principle is limited to $500. Thus, for example, if an employee is eligible under a cafeteria plan to reduce her salary by $1,500 to buy health coverage or to take the $1,500 in taxable benefits, the employee is in constructive receipt of $1,000 under the bill, which is the excess of the taxable benefits available over $500. This would apply even if she elected to acquire $1,500 of health coverage under the cafeteria plan. Of course, if the employee in this example elected to receive $1,500 in cash, such employee would only include this $1,500 once; i.e., the employee would not include the $1,000 constructively received and include an additional $1,500 actually received.

The $500 limit applies on an individual basis, rather than a plan basis, so that, for purposes of the limit, all cafeteria plans of all employers in which an individual participates are aggregated. Correspondingly, the limit applies to the individual's taxable year. In addition, the employer is required to report on its employees' Forms W-2 the amount of taxable benefits available but not chosen by any employee.

The $500 limit on the cash option applies under the bill for FICA and FUTA purposes.

This provision applies to taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

2. Definition of active participant for IRA deduction

Present law

Under present law, a taxpayer is permitted to make deductible IRA contributions up to the lesser of $2,000 or 100 percent of compensation (earned income, in the case of a self-employed individual) if—

(1) in the case of a taxpayer who is not married, the taxpayer either (a) has adjusted gross income (AGI) that does not exceed the applicable dollar amount or (b) is not an active participant in an employer-maintained retirement plan for any part of the plan year ending with or within the taxable year;

(2) in the case of married taxpayers filing a joint return, either (a) the couple has AGI that does not exceed the applicable dollar amount or (b) neither spouse is an active participant in an employer-maintained retirement plan for any part of the plan year ending with or within the taxable year; or

(3) in the case of a married taxpayer filing separately, the taxpayer either (a) has AGI that does not exceed the applicable dollar amount or (b) neither spouse is an active participant in an employer-maintained retirement plan for any part of the plan year ending with or within the taxable year.

For purposes of the active-participant rule, an employer-maintained retirement plan means (1) a qualified pension, profit-sharing, or stock bonus plan; (2) a qualified annuity plan (sec. 403(a)); (3) a simplified employee pension (sec. 408(k)); (4) a plan established for its employees by the United States, by a State or political subdivision, or by any agency or instrumentality of the United States or a State or political subdivision (other than an unfunded deferred compensation plan of a State or local government (sec. 457)); (5) a plan described in section 501(c)(18); or (6) a tax-sheltered annuity (sec. 403(b)).

In a recent Tax Court decision (*Porter* v. *Commissioner*, 88 T.C. No. 28 (March 5, 1987)), it was held that Article III judges are not employees of the United States and, therefore, are not active participants in a plan established for its employees by the United States. Whether or not an individual is an employee also is relevant for other purposes under the Code, such as for the exclusion of certain benefits from income and the eligibility for certain deductions.

House bill

Under the House bill, the decision in *Porter* v. *Commissioner* is overturned, and Federal judges are treated as employees for income tax purposes and as active participants for purposes of the IRA deduction limit, effective for years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

C. LIMITATION ON NONRECOGNITION FOR LIKE-KIND EXCHANGE OF REAL PROPERTY

Present law

Gain or loss is not recognized on the exchange of business or investment property for property of a like-kind. In general, any kind of real property is treated as of like kind with all other real estate.

House bill

The amount of gain that a taxpayer can defer from the exchange of real property under this provision will be limited to $100,000 per year. The provision applies to exchanges after October 13, 1987, unless pursuant to a binding contract in effect on that date.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

II. Business Tax Provisions

A. ACCOUNTING PROVISIONS

1. Repeal of vacation pay reserve

Present law

Under present law, an accrual method taxpayer may elect to deduct an amount representing a reasonable addition to a reserve for vacation pay earned during a year if the amount is paid to employees during the year or within 8½ months after the end of the year.

House bill

The House bill repeals the special election that allows accrual method taxpayers a deduction for additions to a reserve for vacation pay. The amount allowed as a deduction for vacation pay for any taxable year generally is limited to the amount of vacation pay earned during the year to the extent that (1) the amount is paid to employees during the year, or (2) the amount is vested as of the last day of the year and is paid to employees within 2½ months after the end of the year.

The repeal of the vacation pay election is effective for taxable years beginning after December 31, 1987. The adjustment required by the change in method of accounting generally is required to be taken into account ratably over 4 taxable years (i.e., 25 percent per year).

Senate amendment

The Senate amendment is the same as the House bill, except that the adjustment required by the change in method of account-

ing generally is required to be taken into account as follows: (1) 10 percent for the taxable year of change; (2) 50 percent for the first taxable year beginning after the taxable year of change; (3) 15 percent for the second taxable year beginning after the taxable year of change; and (4) 25 percent for the third taxable year beginning after the taxable year of change. Under the Senate amendment, if Rev. Proc. 84–74, 1984–2 C.B. 736, requires the adjustment to be taken into account over a period of less than 4 taxable years, the adjustment is to be taken into account ratably over the shorter period.

Conference agreement

The conference agreement follows the Senate amendment with modifications. The conference agreement provides that vacation pay earned during any taxable year, but not paid to employees on or before the date that is 2½ months after the end of the taxable year, is deductible for the taxable year of the employer in which it is paid to employees. This provision is an exception to the general rule for deferred compensation and deferred benefits pursuant to which an employer is allowed a deduction for the taxable year of the employer in which ends the taxable year of the employee in which the compensation or benefit is includible in gross income.

A change from the reserve method of accounting for vacation pay to the method required by the conference agreement is treated as a change in method of accounting that is initiated by the taxpayer and made with the consent of the Secretary of the Treasury. The net amount of the adjustment required by the change in method of accounting equals the excess of (1) the amount in the vacation pay account as of the last day of the taxable year immediately preceding the taxable year of change over (2) the amount of accrued vacation pay as of the close of the taxable year immediately preceding the taxable year of change that is paid within 2½ months after the close of such taxable year. This amount is to be reduced by the balance in the suspense account as of the close of the taxable year immediately preceding the taxable year of change.

The net amount of the adjustment as reduced by the balance in the suspense account generally is required to be included in income as follows: (1) 25 percent for the taxable year of change; (2) 5 percent for the first taxable year beginning after the taxable year of change; (3) 35 percent for the second taxable year beginning after the taxable year of change; and (4) 35 percent for the third taxable year beginning after the taxable year of change. As under the Senate amendment, if Rev. Proc. 84–74, 1984–2 C.B. 736, requires the adjustment to be included in income over a period of less than 4 taxable years, the adjustment is to be included in income ratably over the shorter period.

The conferees intend that net operating losses will be allowed to offset the adjustment, tax credit carryforwards will be allowed to offset any tax attributable to the adjustment, and, for purposes of determining liability for estimated taxes, the adjustment will be included in income ratably throughout the year in question.

2. Completed contract method

Present law

Taxpayers engaged in the production of property under a long-term contract must compute income from the contract under the percentage of completion method or the percentage of completion-capitalized cost method. An exception is provided for certain small businesses with respect to construction contracts to be completed within two years.

Under the percentage of completion method, the taxpayer must include in gross income for the taxable year an amount based on the product of (1) the gross contract price and (2) the percentage of the contract completed during the taxable year. The percentage of a contract completed during the taxable year is determined by comparing costs incurred with respect to the contract during the year with the estimated total contract costs.

Under the percentage of completion-capitalized cost method, the taxpayer must take into account 40 percent of the items with respect to the contract under the percentage of completion method. The remaining 60 percent of the items under the contract must be taken into account under the taxpayer's normal method of accounting. For example, if the taxpayer's normal method of accounting is the completed contract method, income from a contract is included and contract costs are deducted upon final completion of the contract. All costs that directly benefit or are incurred by reason of a taxpayer's long-term contract activities must be allocated to its long-term contracts in a manner similar to that provided in Treasury regulations under section 451 for extended period long-term contracts.

House bill

Under the House bill, income from a long-term contract must be reported under the percentage of completion method. A long-term contract is defined in the same manner as under present law. The bill preserves the present-law exceptions for certain construction contracts.

The provision is effective for contracts entered into after October 13, 1987. An exception is provided for certain "qualified ship contracts." A "qualified ship contract" is a contract for the construction in the United States of not more than 5 ships [2] that meet certain other requirements. Such ships must not be constructed (directly or indirectly) for the Federal Government and the taxpayer must reasonably expect to complete such contract within 5 years of the contract commencement date.

Senate amendment

No provision.

Conference agreement

The conference agreement changes the percentage of completion-capitalized cost method of computing income from long-term con-

[2] For this purpose, the term "ship" is intended to include only seagoing vessels.

tracts. Seventy percent (versus 40 percent under present law) of items with respect to such a contract must be taken into account under the percentage of completion method. The remaining 30 percent (versus 60 percent under present law) are taken into account under the taxpayer's normal method of accounting. The look-back method of section 460(b)(3) is applied to the 70 percent taken into account under the percentage of completion method.

For this purpose, a taxpayer's normal method of accounting generally is considered to be the method of accounting it used for long-term contracts prior to February 28, 1986 (the effective date of the percentage of completion-capitalized cost method). Thus, any change in the taxpayer's normal method of accounting requires the consent of the Commissioner of Internal Revenue. It is anticipated that the criteria and methods used by the taxpayer, including those criteria and methods used to determine if an item is "unique," prior to February 28, 1986, in determining if a particular contract was a long-term contract will continue to be used by the taxpayer.

The provision of the conference agreement is effective for contracts entered into after October 13, 1987. The exception for certain "qualified ship contracts" in the House bill is included in the conference agreement.

3. Treatment of past service pension costs under uniform capitalization rules

Present law

In general, uniform capitalization rules govern the inclusion in inventory or capital accounts of all costs incurred in manufacturing, construction, and other types of activities involving the production of real or tangible personal property, or incurred in acquiring or holding property for resale. In the legislation mandating a uniform set of capitalization rules, Congress directed the Treasury Department generally to model the regulations implementing these rules after the regulations issued under section 451. dealing with capitalization of costs in connection with extended period long-term contracts.

The extended period long-term contract regulations require capitalization of all direct costs and an allocable portion of indirect costs such as general and administrative and overhead costs. Temporary and proposed regulations issued by the Treasury Department provide that contributions to a pension or annuity plan are not subject to the uniform capitalization rules to the extent they represent past service costs within the meaning of section 412 (containing rules for actuarial funding of pension plans).[3] Such costs are, subject to other limitations in the Code, currently deductible. If the taxpayer's actuarial funding method does not distinguish between current and past service costs, all pension costs must be treated as current service costs, which are subject to capitalization.

House bill

No provision.

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[3] Temp. and Prop. Reg. sec. 1.263A-1T(b)(2)(v)(H)(1).

Senate amendment

Under the Senate amendment, past service costs are subject to the uniform capitalization rules. Thus, an allocable portion of all otherwise allowable pension costs, whether relating to current or past services, must be included in the basis of the property produced by the taxpayer or held for resale by the taxpayer.

The provision is effective for taxable years beginning after December 31, 1987. The amount of any section 481 adjustment required by the amendment (that is, the adjustment reflecting pension costs deducted by a taxpayer in taxable years beginning before January 1, 1988) must be included in income over a period not exceeding four years.

Conference agreement

The conference agreement generally follows the Senate amendment with respect to costs allocable to property produced by the taxpayer or held for resale by the taxpayer. The conference agreement also provides that costs allocable to a long-term contract under section 460(c) include an allocable portion of all otherwise allowable pension costs, whether relating to current or past services. The provision does not affect long-term contracts that are not subject to the cost allocation rules of section 460(c), including those construction contracts described in section 460(e).

For costs allocable to property (other than inventory) produced by the taxpayer, the provision is effective for costs incurred after December 31, 1987, in taxable years ending after such date.

A separate rule is provided for costs allocable to property that is inventory in the hands of the taxpayer. In such a case, the provision of the conference agreement is effective for taxable years beginning after December 31, 1987, and is considered to be a change in the taxpayer's method of accounting. Such change in the taxpayer's method of accounting is treated as initiated by the taxpayer, with the consent of the Secretary of the Treasury, and the net adjustment required by section 481 is taken into account over a period not to exceed four years. The conferees intend that the timing of the section 481 adjustment will be determined under the provisions of Revenue Procedure 84–74, 1984–2 C.B. 736. In addition, the conferees intend that (i) net operating loss carryforwards will be allowed to offset any positive section 481 adjustment; (ii) tax credit carryforwards will be allowed to offset any tax attributable to the section 481 adjustment; and (iii) for purposes of determining estimated tax payments, the section 481 adjustment will be recognized ratably throughout the taxable year in question.

For costs allocable to long-term contracts for which section 460 is effective, the provision of the conference agreement applies to costs incurred after December 31, 1987, in taxable years ending after such date. Section 460 generally is effective for contracts entered into after February 28, 1986. Thus, this provision of the conference agreement does not apply to costs incurred with respect to contracts entered into on or before February 28, 1986.

4. Interest on debt used to purchase or carry tax-exempt obligations

Present law

Interest expense allocable to installment obligations of State or local governments

Present law disallows a deduction for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is not subject to tax (tax-exempt obligations). Debt incurred in the business of selling items on the installment method to State and local governments generally is not considered incurred to purchase or carry the resulting tax exempt installment obligations, and, therefore, interest on such debt generally is not disallowed under the interest disallowance rule.

De minimis rule

Under present law, a deduction for interest generally is disallowed only when the related indebtedness is incurred or continued for the purpose of purchasing or carrying tax-exempt obligations. In the case of an individual, interest on indebtedness generally is nct disallowed if during the taxable year the average adjusted basis of the tax-exempt obligations does not exceed 2 percent of the average adjusted basis of the individual's portfolio investments and trade or business assets. In the case of a corporation, interest on indebtedness generally is not disallowed if during the taxable year the average adjusted basis of the tax-exempt obligations does not exceed 2 percent of the average adjusted basis of all assets held in the active conduct of the trade or business. These safe harbors are inapplicable to financial institutions and dealers in tax-exempt obligations.

House bill

Disallowance of interest expense allocable to installment obligations of State or local governments

Under the House bill, a taxpayer that holds one or more tax-exempt installment obligations acquired after December 31, 1987, is denied a deduction for the portion of the taxpayer's otherwise deductible interest expense that is allocable to such tax-exempt installment obligations. The disallowance rule is effective for taxable years ending after December 31, 1987.

De minimis rule

The House bill establishes a statutory de minimis rule for tax-exempt obligations that are held by any taxpayer other than a financial institution. Under this de minimis rule, which applies in lieu of any other de minimis rule prescribed by the Treasury Secretary, interest on indebtedness is not disallowed for any taxable year if the average adjusted basis of tax-exempt obligations does not exceed the lesser of (1) $1 million or (2) 2 percent of the average adjusted basis of all assets held by the taxpayer. The de minimis rule applies to taxable years ending after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

5. Installment sales

Present law

Under present law, a taxpayer who sells property ordinarily must recognize gain or loss at the time of the sale. However, a taxpayer who is eligible to use the installment method may defer the payment of tax and recognize gain from a sale of property in proportion to the payments received.

In general, the installment method may be used to report gain from the sale of personal property by dealers in personal property who regularly sell on the installment plan or from the sale of other property where at least one payment is to be received after the end of the taxable year of the sale.

Use of the installment method is not allowed for sales pursuant to a revolving credit plan and for sales of publicly traded property. In addition, use of the installment method generally is limited under the "proportionate disallowance rule" for dealer sales of real property and dealer sales of personal property eligible to be reported on the installment method, as well as for sales of real property used in the taxpayer's trade or business or held for the production of rental income where the selling price of such real property is greater than $150,000. Under the proportionate disallowance rule, a pro rata portion of the taxpayer's indebtedness is allocated to, and is treated as a payment on, the installment obligations of the taxpayer.

At the election of the seller, installment obligations arising from certain sales of residential lots and "timeshares" are not subject to the proportionate disallowance rule. Rather, such taxpayers may compute their tax liability under the installment method and are required to pay interest on the amount of deferred tax attributable to the use of the installment method.

The installment method may not be used for purposes of the alternative minimum tax for sales that are subject to the proportionate disallowance rule. The installment method may be used, however, for purposes of the alternative minimum tax for sales of residential lots and "timeshares" with respect to which a taxpayer elects to use the installment method and pay interest on the deferred tax.

Generally, if an installment obligation is disposed of, gain (or loss) is recognized equal to either (1) the difference between the amount realized and the basis of the obligation in the case of a satisfaction at other than face value or a sale or exchange of the obligation, or (2) the difference between the fair market value of the obligation at the time of the disposition and the basis of the obligation in the case of any other disposition. The basis of the obligation is equal to the basis of the property sold plus the amount of gain previously recognized. In general, the mere pledge of an install-

ment obligation as collateral for a loan is not treated as a disposition.

House bill

No provision.[4]

Senate amendment

In general

The Senate amendment repeals the installment method for dispositions of property by dealers ("dealer disposition"), effective for dispositions occurring after December 31, 1987. Generally, all payments to be received from a dealer disposition of property are treated as received in the year of disposition.

Definition of dealer disposition

A "dealer disposition" is defined for purposes of the repeal of the installment method as any disposition of personal property by a person who regularly sells or otherwise disposes of property on the installment plan. A dealer disposition also includes any disposition of real property that is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

A dealer disposition does not, however, include certain dispositions of residential lots or "timeshares" if the taxpayer elects to pay interest on the amount of deferred tax attributable to the use of the installment method. Additionally, a dealer disposition does not include a disposition of property used or produced in the trade or business of farming. Thus, the present-law installment method rules applicable to (1) dispositions of residential lots or "timeshares" with respect to which interest is paid and (2) dispositions of property used or produced in the trade or business of farming, are not affected by the amendment.

Effective date.—The repeal of the installment method for dealer dispositions is effective for dispositions occurring after December 31, 1987. The treatment of an installment obligation arising out of a dealer disposition occurring before March 1, 1986, is not affected by the amendment.

An applicable installment obligation arising out of a dealer disposition occurring after February 28, 1986, and before January 1, 1988, continues to be subject to the proportionate disallowance rule for taxable years ending after December 31, 1986, and beginning before January 1, 1988. Any gain from an installment obligation arising out of a dealer disposition occurring after February 28, 1986, and before January 1, 1988, that remains to be recognized as of the first day of the first taxable year beginning after December 31, 1987,[5] is not to be recognized as payments are received (or

[4] Subtitle C of title X of the House bill contains provisions relating to installment sales. Subtitle C provisions generally are not included in the conference agreement.

[5] The amount of gain that remains to be recognized as of the first day of the first taxable year beginning after December 31, 1987, does not include any gain that is taken into account for such taxable year or for a later taxable year under the 1986 Act transition rule for sales of real property by dealers (sec. 811(c)(6) of the 1986 Act). Similarly, the amount of gain that remains to be recognized as of the first day of the first taxable year beginning after December 31, 1987, is not affected by the 1986 Act transition rule that permits the delayed payment of certain tax for

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treated as received under the proportionate disallowance rule) in a later taxable year. Instead, the amount of the gain that remains to be recognized from such installment obligations is to be taken into account as a section 481(a) adjustment over a period beginning with the first taxable year that begins after December 31, 1987. The amount of the section 481(a) adjustment is to be taken into account under the principles of Rev. Proc. 84-74, 1984-2 C.B. 736, but the adjustment period generally is 4 taxable years rather than 6 taxable years. In determining the period that the adjustment is to be taken into account, the application of the proportionate disallowance rule is not to be treated as a new method of accounting.

The Senate amendment does not affect the transition relief provided at the time the proportionate disallowance rule was enacted.

Conference agreement

Treatment of installment sales by dealers

The conference agreement follows the Senate amendment. Thus, the repeal of the installment method for dealer dispositions applies to dispositions occurring after December 31, 1987. The amount of any gain from an installment obligation arising out of a dealer disposition occurring after February 28, 1986, and before January 1, 1988, that remains to be recognized as of the first day of the first taxable year beginning after December 31, 1987, is to be taken into account as a section 481(a) adjustment over a period beginning with the first taxable year that begins after December 31, 1987. The conferees intend that the exception from the proportionate disallowance rule of the Tax Reform Act of 1986 and the disallowance of the installment method for dealer dispositions under the conference agreement for certain sales of property by a manufacturer to a dealer (sec. 811(c)(2) of the 1986 Act) applies to any manufacturer that qualifies under the terms of that exception.

Treatment of certain installment sales by nondealers

In general.—The conference agreement contains several modifications to the present-law installment sale rules that apply to the sale of non-farm real property that is used in a taxpayer's trade or business or that is held for the production of rental income where the selling price of such real property is greater than $150,000. First, the proportionate disallowance rule is repealed for installment obligations arising out of the disposition of such real property. Second, an interest charge is imposed on the tax that is deferred under the installment method to the extent the amount of deferred payments arising from all dispositions of such real property during any year exceeds $5 million. Third, under the conference agreement, if any indebtedness is secured directly by an installment obligation that arises out of the disposition of such property, the net proceeds of the secured indebtedness is treated as a payment on such installment obligation. Finally, in determining alter-

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sales of personal property by dealers (sec. 811(c)(7) of the 1986 Act). Each of these rules continues to apply to installment obligations arising out of dealer dispositions occurring after February 28, 1986, and before January 1, 1988, in taxable years beginning before January 1, 1988.

native minimum taxable income, the installment method may be used with respect to such dispositions of real property.

Definition of nondealer real property installment obligation.—The provisions of the conference agreement relating to nondealer installment sales apply only to installment obligations that arise out of the disposition of real property that is used in a taxpayer's trade or business or that is held for the production of rental income, where the sales price of the real property is greater than $150,000 ("nondealer real property installment obligations").[6]

The term "nondealer real property installment obligation" does not include any installment obligation that arises out of the disposition by an individual of personal use property or the disposition of any property that is used or produced in the trade or business of farming. Additionally, the term "nondealer real property installment obligation" does not include any installment obligation that arises out of a disposition of a residential lot or "timeshare" if the taxpayer elects to pay interest on the amount of the deferred tax attributable to the use of the installment method. The amount of interest payable with respect to installment obligations arising out of the sale of residential lots or "timeshares" is determined under the present-law rules applicable to such obligations.

Interest charge on deferred tax.—Interest is required to be paid with respect to the deferred tax attributable to a nondealer real property installment obligation that arises during a year and is outstanding as of the close of the year only if the aggregate face amount of all nondealer real property installment obligations that arise during a year and that are outstanding as of the close of that year exceeds $5 million. In determining whether the $5 million threshold has been exceeded for any taxable year, the face amount of installment obligations arising during the year and outstanding as of the close of the year is to be reduced by the amount treated as a payment on such obligations for such taxable year under the pledge rule described below. Furthermore, in applying the $5 million threshold, all persons treated as a single employer under section 52 are treated as one person, except as otherwise provided in Treasury regulations.

If interest is required to be paid with respect to a nondealer real property installment obligation that arises during any year, interest must be paid for any subsequent taxable year if any of the installment obligation is outstanding at the close of that year.

The amount of interest payable with respect to any installment obligation to which the interest rules apply equals the applicable percentage of the deferred tax liability with respect to such obligation multiplied by the underpayment rate under section 6621 in effect for the month with or within which the taxable year ends. For any taxable year, the deferred tax liability with respect to any installment obligation equals the amount of gain under the obligation that has not been recognized as of the close of the taxable year multiplied by the maximum rate of tax in effect for such taxable

[6] For purposes of determining whether the sales price of any real property exceeds $150,000, all sales that are part of the same transaction (or series of related transactions) are treated as a single sale.

year. This rate will vary depending on whether the taxpayer is a corporation or is an individual, estate, or trust.

The applicable percentage with respect to installment obligations arising in a taxable year is the percentage determined by dividing (1) the portion of the aggregate face amount of installment obligations outstanding as of the close of the taxable year in excess of $5 million, by (2) the aggregate face amount of the installment obligations outstanding as of the close of the taxable year. This percentage will not change as payments are made (or deemed made under the pledge rule) in subsequent taxable years.

The interest computed under this provision for any taxable year is payable as additional tax for such taxable year. The interest payable under this provision, however, is treated as interest that is subject to the general rules regarding the deductibility of interest on an underpayment of tax (sec. 163).

The Treasury Secretary is authorized to prescribe regulations that carry out the purposes of the interest rule including such regulations as may be necessary to address the treatment of short taxable years, installment obligations with contingent payments, and pass-through entities. The conferees anticipate that the regulations relating to short taxable years will proportionately reduce the amount of interest payable and the $5 million threshold for any short taxable year. The conferees also anticipate that the regulations relating to contingent payments will address the treatment of contingent payments for purposes of the $5 million threshold and for purposes of determining the amount of gain that remains to be recognized under an installment obligation as of the end of any taxable year. Finally, the conferees anticipate that the regulations relating to pass-through entities will treat the installment obligations of a partnership as owned directly by the partners in proportion to each partner's share in the partnership.

Pledging of nondealer real property installment obligations.—Under the conference agreement, if a nondealer real property installment obligation is pledged as security for an indebtedness, the net proceeds of the loan [7] are treated as a payment received on such installment obligation on the later of the date that the indebtedness is secured or the date that the net proceeds are received by the taxpayer. Gain is recognized with respect to such obligation in an amount equal to the product of the net loan proceeds received and the gross profit ratio applicable to the installment obligation.

Receipt by the taxpayer of payments on the installment obligation subsequent to the time of the pledge generally does not result in recognition of additional gain, except to the extent that the gain that otherwise would be recognized on account of such payments exceeds the gain, if any, recognized as a result of the pledge. The rule relating to nonrecognition of gain from subsequent payments applies regardless of whether or not such payments are used to pay any portion of the indebtedness secured by the installment obligation. The total amount of gain that can be recognized on an obligation as a result of secured loans and the receipt of payments cannot exceed the total gain from the installment sale.

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[7] The net loan proceeds are equal to the gross loan proceeds less the direct expenses of obtaining the loan.

For purposes of this rule, indebtedness is secured by an installment obligation to the extent that the payment of principal or interest on the indebtedness is directly secured (either under the terms of the indebtedness or any other arrangement) by an interest in the installment obligation.

Use of installment method for alternative minimum tax purposes.— Under the conference agreement, the installment method may be used in determining alternative minimum taxable income for all nondealer dispositions of property.

Effective dates for sales by nondealers.— The proportionate disallowance rule is repealed for nondealer real property installment obligations arising out of dispositions occurring in taxable years beginning after December 31, 1987. Nondealer real property installment obligations arising out of dispositions occurring after August 16, 1986, in taxable years beginning before January 1, 1988, are subject to the proportionate disallowance rule in any later taxable year for which a taxpayer has allocable installment indebtedness.

The interest charge applies to nondealer real property installment obligations arising out of dispositions occurring in taxable years beginning after December 31, 1987. The pledge rule applies to any nondealer real property installment obligation that is pledged after December 17, 1987, in taxable years ending after that date.

If, for any taxable year to which the proportionate disallowance rule applies, a nondealer real property installment obligation is pledged as security for a loan after December 17, 1987, the net proceeds of the loan are treated as payment on the installment obligation. In applying the proportionate disallowance rule for such year, the face amount of the installment obligation shall be reduced by the net proceeds of the loan and the allocable installment indebtedness for such year is not to include the amount of secured indebtedness.

For taxable years ending after December 31, 1986, a taxpayer may elect, pursuant to such rules as may be prescribed by the Treasury Secretary, to apply the interest rules contained in the conferen agreement to dispositions occurring after August 16, 1986,[8] and the pledge rule to pledges occurring after August 16, 1986. If a taxpayer makes this election, the proportionate disallowance rule is not to apply to installment obligations that arise from dispositions occurring after August 16, 1986.

The provision that allows the installment method to be used in determining alternative minimum taxable income for all nondealer dispositions of property is effective for dispositions occurring in taxable years beginning after December 31, 1986. The present-law alternative minimum tax treatment of installment sales occurring in taxable years beginning before January l, 1987, is continued.

The conference agreement does not apply to any nondealer real property installment obligation that was specifically provided relief at the time the proportionate disallowance rule was enacted.

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[8] Under this election, interest would be charged with respect to installment obligations arising during a year and outstanding as of the close of the year only if the aggregate face amount of installment obligations that arise during the year and that are outstanding as of the close of the year exceeds $5 million.

6. Certain continuing-care facilities

Present law

Under present law, certain loans bearing interest at below-market rates are treated as loans bearing interest at a market rate accompanied by a payment from the lender to the borrower that is characterized in accordance with the substance of the particular transaction (e.g., gift, compensation, dividend, etc.).

An exception from the below-market loan rule is provided for certain loans to certain "continuing care facilities."

House bill

The exception to the below-market loan rules for loans to certain continuing care facilities is repealed. The provision generally is effective for loans made after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

7. Current accrual of market discount on bonds

Present law

In general, present law requires inclusion of market discount on bonds only upon redemption or other disposition of the bond. Thus, a taxpayer who purchases a bond after original issue at a price less than its face amount (or adjusted issue price in the case of a bond originally issued at a discount) does not, absent an election, include in income any portion of the discount prior to disposition of the bond. Except in the case of tax-exempt obligations, market discount that accrues while the taxpayer holds such a bond is treated as ordinary income upon the disposition of the bond up to the amount of the gain realized. Interest on indebtedness incurred or continued to purchase or carry a bond with market discount is deferred to the extent such interest does not exceed the market discount accruing on the bond. Any interest so deferred is allowed when the market discount is recognized.

House bill

Under the House bill, a purchaser of a market discount bond (including a tax-exempt bond) generally must include in income annually the amount of market discount attributable to the year. The amount of the inclusion is computed under the rules of present law relating to the treatment of market discount on disposition of a bond; thus, discount accrues ratably unless the taxpayer elects to accrue on a constant interest basis. The provision does not apply to the extent the market discount on a bond exceeds the amount that would result in the taxpayer's yield to maturity on the bond being equal to three times the applicable Federal rate at the time the bond was purchased. Special rules are provided for transfers of market discount bonds in nonrecognition transactions.

The bill authorizes the Treasury Department to require reporting by brokers regarding transactions involving market discount bonds.

The provision is effective for bonds acquired after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

8. Accrual accounting for certain farm corporations

Present law

Entities engaged in the trade or business of farming generally may use the cash method of accounting for such trade or business. A corporation (other than an S corporation) that has gross receipts in excess of $1 million for any taxable year beginning after 1975 must use an accrual method of accounting unless it is a "family corporation." In general, a "family corporation" is a corporation 50 percent or more of whose stock is owned by members of the same family (sec. 447(c)(2)).[9] Certain closely held corporations substantially owned by two or three families on October 4, 1976, and at all times thereafter also qualify as a family corporation (sec. 447(h)).

A partnership engaged in the trade or business of farming must use an accrual method of accounting if it has a corporate partner and such corporate partner would be required to use an accrual method of accounting in connection with a farming business.

If the entity engaged in the trade or business of farming is a tax shelter, it may not use the cash method of accounting, regardless of whether it is also a "family corporation."

House bill

In general

The House bill requires a family corporation to use the accrual method of accounting unless, for each prior taxable year beginning after December 31, 1985, such corporation (and any predecessor corporation) did not have gross receipts exceeding $25 million. Gross receipts for any taxable year of less than 12 months must be annualized in order to determine if gross receipts exceed $25 million. All corporations that are members of the same controlled group (within the meaning of sec. 1563(a)) are treated as one corporation for the purpose of this test. A family corporation includes those family-owned corporations (sec. 447(c)(2) of present law) and those closely held corporations (sec. 447(h)) that are not required by present law to use the accrual method of accounting.

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[9] For this purpose, the members of the same family are an individual, such individual's brothers and sisters, brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing.

Suspense account

If any family corporation is required by this provision of the House bill to change its method of accounting, such corporation is not required to take into income so much of the adjustment under section 481 as is used to establish the opening balance of a suspense account. The initial opening balance of the suspense account is the lesser of the net adjustments that otherwise would have been required to be taken into account under section 481 for the year of change or the amount of such net adjustments determined as of the close of the most recent quarter ending before October 13, 1987.

For example, a calendar year family corporation is required to change to the accrual method of accounting effective for its taxable year beginning January 1, 1988. The net adjustment under section 481 as of December 31, 1987, is $100,000. The net adjustment under section 481 as of September 30, 1987, was $90,000. The opening balance of the suspense account is $90,000 and $10,000 ($100,000-$90,000) is required to be included in income in the taxable year beginning January 1, 1988.

The amount placed in the suspense account is required to be taken into income upon the occurrence of certain events. If the taxpayer fails to meet the definition of a family corporation, the amount of the suspense account is taken into income in the taxable year in which the corporation ceases to be a family corporation. Also, if the gross receipts of the corporation attributable to farming for any taxable year decline to an amount below the gross receipts attributable to farming for the last taxable year for which the cash method of accounting was allowed a portion of the suspense account may be taken into income.[10] The portion taken into income is equal to the current balance of the suspense account multiplied by a fraction, the denominator of which is the lesser of (a) the gross receipts of the taxpayer for the taxable year preceding the year of change to the accrual method, or (b) the gross receipts for the most recent year in which a portion of the suspense account was taken into income under this rule and the numerator of which is the amount used as the denominator in this fraction less the gross receipts for the current taxable year. For purposes of determining the portion of the suspense account required to be taken into income, only gross receipts from farming are taken into account.

Effective date.—The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

In general

The Senate amendment generally parallels the House bill, except that gross receipts of other entities attributed to the family corporation are limited to the family corporation's share of such gross receipts. Also, the portion of the section 481 adjustment used to establish the opening balance of a suspense account is the lesser of (a) the net adjustments that otherwise would have been required to be taken into account under section 481 for the year of change or

[10] For this purpose, gross receipts from taxable years of less than 12 months will be annualized.

(b) the amount of such net adjustment as of the beginning of the taxable year preceding the year of change.

Attribution rules

Certain attribution rules apply in determining the amount of gross receipts of a family corporation under the Senate amendment. In the case of a family corporation that is part of a controlled group (within the meaning of sec. 1563(a)), a percentage of the gross receipts for the taxable year of other members of such controlled group is allocated to the family corporation. The percentage used in allocating such gross receipts is equal to the percentage of the fair market value of stock in such other member held, directly or indirectly, by the family corporation on the last day of the taxable year of such other member. For this purpose, stock excluded under section 1563(c) is not considered.

For example, a father and his son own 100 percent of Corporation A (a family corporation) and 60 percent of Corporation B. Corporation A owns an additional 20 percent of Corporation B. The remaining 20 percent of Corporation B is held by an unrelated party. Corporation A and Corporation B are members of the same controlled group. Eighty percent (20 percent direct ownership and 60 percent indirect ownership) of the gross receipts of Corporation B will be included with the gross receipts of Corporation A for the purpose of determining whether Corporation A has gross receipts in excess of $25 million.

The Senate amendment provides that the Secretary of the Treasury will issue regulations to prevent gross receipts from being taken into account of more than once as a result of the attribution rules. For example, assume that Corporation A in the example in the preceding paragraph sells a calf to Corporation B for $100. Corporation B feeds the calf and sells it to unrelated parties for $250. The gross receipts of Corporation B attributable to Corporation A from this transaction would be 80 percent of the difference between $250 and $100, since the $100 of receipts attributable to that stage of the calf's development while held by Corporation A is already taken into account in the gross receipts of Corporation A.

If a family corporation owns, directly or indirectly, any interest in a partnership, estate, trust, or other pass-through entity, the Senate amendment provides that the family corporation must take into account its proportionate share of the gross receipts of such a pass-through entity in determining the gross receipts of the family corporation.

Effective date.—The provision is effective for taxable years beginning after December 31, 1987.

Conference agreement

The conference agreement generally follows the Senate amendment with one modification relating to the recapture of the suspense account where a family corporation is sold outside of the family.

Recapture of suspense account

Under the conference agreement, the balance in the suspense account is required to be included in income in the year in which the

corporation ceases to be a family corporation. In addition, the conference agreement generally requires recapture of the suspense account if the required level of control of the corporation is transferred outside the family group that owned the corporation on December 15, 1987. Thus, in the case of a corporation that is a family corporation because at least 50 percent of its shares are owned by a single family (sec. 447(c)(2) of present law and new sec. 447(d)(2)(C)(i)), recapture of the suspense account occurs any time after December 15, 1987, a transfer of stock occurs such that more than 50 percent of that corporation's stock is held by individuals who are not members of the family that held 50 percent or more of the corporation's stock on December 15, 1987. Similarly, in the case of a corporation that was a family corporation because more than 65 percent of its shares are owned by not more than three families (sec. 447(h)), recapture of the suspense account occurs any time, after December 15, 1987, a transfer of stock occurs such that more than 65 percent of that corporation's stock is held by individuals who were not members of the families that held 65 percent or more of the corporation's stock on December 15, 1987.

For example, 100 percent of the stock in a family corporation is owned by an individual and her sisters. If all of the stock is transferred to an unrelated individual and the unrelated individual's brothers, the balance in the suspense account is required to be taken into the income of the corporation in the year of transfer. Nevertheless, if the stock had been transferred to the sons and daughters of the original owners, no portion of the suspense account would be required to be taken into income as a result of the transfer, since the shares were transferred to members of the transferors' family.

In conformance with the House bill and the Senate amendment, these rules are applied to any taxpayer that is a party to any transaction in which there is nonrecognition of gain or loss to any party by reason of subchapter C under regulations prescribed by the Secretary of the Treasury. The conferees anticipate that these regulations will require the inclusion in income of the balance in the suspense account where the ownership of the family corporation is effectively transferred outside of the transferor's family, regardless of whether the transfer is described in section 381.

Effective date.—The provision of the conference agreement is effective for taxable years beginning after December 31, 1987.

9. Amortization of customer base intangibles and similar items

Present law

Taxpayers may take depreciation or amortization deductions for the exhaustion, wear, tear, and obsolescence of property (sec. 167(a)). No such deductions are allowed, however, with respect to property that is not a wasting asset or property whose useful life cannot be estimated with reasonable accuracy. Deductions are generally allowed for the costs attributed to such intangible assets as patents or other statutory or contract rights that exist for a specific, non-extendible period of time. However, because goodwill does not have a determinable useful life, no depreciation deduction is allowed with respect to that intangible asset. Accordingly, the por-

tion of the purchase price of a business that is allocated to goodwill may not be amortized or depreciated. Goodwill has been defined as the expectancy of continued patronage, for whatever reason, or as the probability that old customers will resort to the old place.

A substantial portion of the purchase price of a business is frequently allocated to certain intangible assets that represent the value of the existing customer base, and amortized over the period it is estimated that those customers may be lost. Courts have upheld such deductions in some cases. In other cases, the deductions have been denied on varying grounds, including the similarity of the assets to goodwill or the failure of the taxpayers to establish that the asset had a determinable useful life. The cases permitting or suggesting the possibility of a deduction have not always indicated whether it is necessary to take into account any expectation or evidence that new customers will replace those that die, move away, or otherwise sever their customer relationships.

Generally, costs attributable to the creation or acquisition of an asset that has a useful life of more than a year may not be currently deducted, but must be capitalized. Goodwill typically would have a life extending beyond one year. However, taxpayers deduct currently costs that may contribute to the creation of goodwill or to the replacement of customer base.

If the transferor of a franchise, trademark, or trade name retains certain significant rights, the transfer is not treated as the sale or exchange of a capital asset (section 1253(a)). Section 1253(d)(2) of the Code permits the transferee to deduct a lump sum payment to such a transferor over a period of not more than 10 years, regardless of whether the period of the transfer exceeds 10 years or is for an indeterminate period. Internal Revenue Service private letter rulings have applied this provision to permit taxpayers to deduct over 10 years payments for franchises, trademarks or trade names made to transferors who do not retain significant rights with respect to the assets.

House bill

The bill provides that any amount paid or incurred to acquire customer base, market share, or any renewing or similar intangible item is treated as paid or incurred for intangible property with indeterminate useful life, and therefore is not amortizable or depreciable. Section 1253(d)(2) does not apply to any amount paid or incurred to acquire such assets.

A significant portion of the value attributed to franchises, trademarks or trade names would generally be considered attributed to an asset of indeterminate useful life. In addition, section 1253(d)(2) does not apply to any payment made by the transferee of a franchise, trademark or trade name to a transferor who does not retain any significant rights.

The provision applies to acquisitions after October 13, 1987, unless pursuant to a binding written contract in effect on that date and at all times thereafter. No inference is intended as to prior law.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

10. Election of taxable year other than required taxable year

Present law

Partnerships, S corporations, and personal service corporations generally are required to conform their taxable years to that of their owners, effective for taxable years beginning after December 31, 1986. An exception is made for a partnership, S corporation or personal service corporation that establishes to the satisfaction of the Secretary of the Treasury a business purpose for having a different taxable year.

House bill

In general

The House bill provides an election for a partnership, S corporation or personal service corporation that is otherwise required to change its taxable year to retain the taxable year used by the partnership, S corporation or personal service corporation for its last taxable year beginning in 1986. An election also is provided for such entities to adopt or change to taxable years with limited deferral periods, if such adoption or change does not result in a greater deferral than the year currently in use.

Partners in an electing partnership and shareholders in an electing S corporation are required to make enhanced estimated tax payments. An electing personal service corporation is limited in the amount of deductions it can take for payments to employee-owners unless certain minimum distributions are made to employee-owners before the end of the calendar year.

Taxable years which may be elected

A partnership, S corporation, or personal service corporation is required to use a taxable year determined by statute or regulation, unless it makes an election under this provision. Generally, a partnership, S corporation or personal service corporation may elect a different taxable year only if such taxable year results in a deferral period not longer than three months. The deferral period is the number of months between the close of the taxable period elected and the close of the taxable year otherwise required (the required taxable year). For example, if a taxable year ending September 30 is elected and a taxable year ending December 31 is otherwise required, the deferral period of the taxable year ending September 30 is three months.

In addition, a partnership, S corporation, or personal service corporation may elect a taxable year under this provision that is the same as the entity's last taxable year beginning in 1986. This election is available only if it is made for the entity's first taxable year beginning after December 31, 1986. Such an election is not required to be made prior to the 90th day after the date of enactment of this Act. In the case of a partnership, S corporation, or personal service corporation changing taxable years, an election is available only if the deferral period of the taxable year elected is not longer than

the shorter of three months or the deferral period of the taxable year being changed.

A special provision is provided for C corporations that made an election after September 18, 1986 and before January 1, 1987 to be treated as S corporations. If such a former C corporation had a taxable year other than a calendar year at the time of the election to be treated as an S corporation and elected to have a calendar year as its taxable year as an S corporation, it may change to a taxable year that results in a deferral period not longer than the shorter of three months or the deferral period of the taxable year of the C corporation prior to the election to be treated as an S corporation.

The Secretary of the Treasury is directed to prescribe regulations as may be necessary to carry out these provisions, including but not limited to regulations to prevent a taxpayer from obtaining an elective taxable year that would otherwise not be available through a change in the form of any entity.

Effect of election

Partnerships and S corporations.—In the case of an electing partnership or S corporation, the partners or shareholders of such electing entity are required to make enhanced estimated tax payments. Enhanced estimated tax payments are due in four equal installments on the dates provided for the installment payments of estimated tax. The enhanced estimated tax payments are due whether or not the partner or S corporation shareholder otherwise is required to make a quarterly installment payment of estimated Federal tax. Failure to make required enhanced estimated tax payments results in the imposition of underpayment penalties in the same manner as if the enhanced estimated tax payments were required payments of estimated income tax.

The amount of the enhanced estimated tax payment for any partner or S corporation shareholder is an amount equal to the product of the applicable percentage multiplied by the highest rate of tax imposed by section 1 (35 percent for taxable years beginning in 1987) multiplied by the net base year income of the partner or S corporation shareholder. The applicable percentage is determined by the calendar year in which the applicable election year begins. The applicable election year is the year of the partnership or S corporation for which the election is in effect. The applicable percentage is 25 percent for applicable election years beginning in 1987 and increases by an additional 25 percent each year thereafter, so that the applicable percentage is 100 percent for applicable election years beginning in 1990 or thereafter.

The net base year is the year preceding the applicable election year. The net base year income of a partner or S corporation shareholder with respect to any partnership or S corporation is equal to the sum of (a) the deferral ratio times the taxpayer's distributive share of the partnership or S corporation's net income for the base year, plus (b) the excess (if any) of the deferral ratio times the aggregate amount of applicable payments made by the partnership or S corporation to the taxpayer during the base year over the aggregate amount of such payments made during the deferral period.

The deferral ratio is the number of months in the deferral period divided by the number of months in the partnership's or S corpora-

tion's taxable year. A partner's distributive share of partnership net income is the amount determined by taking into account the partner's distributive share of items described in sections 702(a) and 704, other than items of credit. An S corporation shareholder's distributive share is the amount determined by taking into account the shareholder's pro rata share of items described in section 1366(a), other than items of credit. In no case may a partner's or S corporation shareholder's distributive share for the purpose of this calculation be less than zero.

Applicable payments are amounts paid or incurred by a partnership or S corporation that are includible in the gross income of the partner or shareholder, other than as part of such partner's or shareholder's distributive share. The amount of such payments made in the deferral period is the amount of such payments made during the fiscal year before the beginning of a required taxable year.

A taxpayer is required to make enhanced estimated tax payments for all electing partnerships or S corporations in which such taxpayer owns shares or an interest. However, a taxpayer required to make aggregate payments of enhanced estimated taxes for the year of $200 or less is excused from making such payments.

An electing partnership or S corporation is required to compute and disclose to its partners or shareholders the enhanced estimated tax amount for each such partner or shareholder for the applicable election year, as well as any other information the Secretary of the Treasury may prescribe to carry out this provision. This does not, however, release the partner or shareholder from any responsibility he may have with regard to the determination of such amount.

Personal service corporations.—An electing personal service corporation is required to meet minimum distribution requirements in the portion of the applicable election year that constitutes the deferral period.[11] The minimum distribution requirements for any applicable election year are met if applicable amounts paid to employee-owners during the deferral period of the applicable election year equal or exceed the lesser of (a) the product of (i) the applicable amounts paid during the preceding taxable year, divided by the number of months in such year, multiplied by (ii) the number of months in the deferral period or (b) the applicable percentage of the adjusted taxable income of the personal service corporation for the deferral period of the applicable election year. For these purposes, the applicable percentage is the average percentage (not to exceed 95 percent) of the adjusted taxable income of the personal service corporation that was paid out in applicable amounts over the prior three taxable years. Adjusted taxable income is the taxable income for the period increased by any amount paid or incurred to an employee-owner that was taken into account in determining taxable income.

If a personal service corporation fails to meet the minimum distribution requirement for any applicable election year, the amount of applicable payments it may deduct for the applicable election year is limited to a maximum deductible amount. The maximum

[11] Since personal service corporations are required to use the calendar year, the deferral period is the portion of the applicable election year before January 1.

deductible amount is equal to the sum of (a) the applicable amounts paid in the deferral period plus (b) the applicable amounts paid in the deferral period divided by the number of months in the deferral period multiplied by the number of months not in the deferral period. Any amount paid or incurred by the personal service corporation that would be deductible but for the maximum deduction amount is treated as paid or incurred in the succeeding taxable year.

Tiered structures

The committee is concerned that the use of the election in the case of tiered structures may not yield appropriate results. Accordingly, the elections provided by this provision are not available to an entity that is part of a tiered structure, except as provided in regulations. An example of such a tiered structure would be a calendar year partnership with partners that are personal service corporations with taxable years ending November 30 where the personal service corporations are in turn owned by calendar year individuals. Except as provided in regulations, neither the partnership nor the personal service corporations described would be allowed to use the election provided by this provision.

Effective Date.—The provision generally is effective for taxable years beginning after December 31, 1986. The requirement that enhanced estimated taxes be paid by partners and shareholders of electing entities is effective for taxable years beginning after December 31, 1987, with respect to applicable election years beginning after December 31, 1986.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification requiring an electing partnership or S corporation, rather than the owners of such an entity, to make additional payments. Such additional payments are treated as payments of tax imposed by subtitle C. The conference agreement also clarifies which tiered structures will be eligible to make the election to use a taxable year other than the required taxable year. Further, the conference agreement provides special rules for S corporations that were previously C corporations and denies a net operating loss carrryback to or from any taxable year of a personal service corporation to which an election applies.

Entity level payments

The conference agreement provides that an electing partnership or S corporation must make a "required payment" for any taxable year for which an election is in effect. The payment is due on April 15th of the calendar year following the calendar year in which the election year begins, unless the Secretary of the Treasury provides for a later date. The "required payment" is the payment of a tax imposed by subtitle C that is due on such date. Willful failure by an entity to comply with these rules results in the cancellation of the election by the entity, effective from the year in which the will-

ful failure occurred. The payment by the electing entity replaces the requirement that the owners of such electing entities make enhanced estimated tax payments included in the House bill.

The "required payment" for an election year is equal to the excess of (a) the product of the applicable percentage of the adjusted highest section 1 tax rate multiplied by the net base year income of the entity over (b) the amount of the required payment for the preceding election year. The adjusted highest section 1 rate is 36 percent for election years beginning in 1987, and the rate of tax imposed by section 1 as of the end of the year preceding the election year, plus one percentage point for all other election years. If the required payment for any election year is negative, the entity is entitled to a refund of such amount.

An entity's net base year income is equal to the sum of the deferral ratio multiplied by the entity's net income for the preceding taxable year, plus the excess of (a) the deferral ratio multiplied by the aggregate amount of applicable payments made by the entity during the preceding year, over (b) the aggregate amount of such applicable payments made during the deferral period of the preceding year. The deferral ratio is the ratio that the number of months in the deferral period of the preceding taxable year bears to the number of months in the entity's preceding taxable year. In the case of a partnership, net income is the amount (not less than zero) determined by taking into account the aggregate amount of the partnership's items (other than credits) described in section 702(a). In the case of an S corporation, net income is the amount (not less than zero) determined by taking into account the aggregate amount of the S corporation's items (other than credits) described in section 1366(a). In the case of an S corporation that was a C corporation for such preceding taxable year, net income is the amount (not less than zero) of its taxable income for such year. Applicable payments are amounts paid or incurred by a partnership or S corporation includible in the gross income of its owner, other than gains from the sale or exchange of property between the owner and the entity and dividends.

An entity does not make a "required payment" if the total of required payments for the current and all preceding election years does not exceed $500. An amount not required to be paid is not considered to be part of the required payment for the preceding election year for the purpose of determining the amount of the required payment for the current election year. For example, the required payment of an entity would be $400 in its first election year and an additional $400 in its second election year before the application of this rule. The entity does not make a required payment for the first election year and makes a required payment of $800 for the second election year.

No interest is due or allowable with respect to the refund due an entity in a year in which it has a negative required payment. The Secretary of the Treasury is directed to prescribe such regulations as may be necessary to carry out this provision, including regulations requiring annualization of years of less than 12 months.

Personal service corporations

The conference agreement generally follows the House bill with regard to the treatment of personal service corporations electing a taxable year other than a required taxable year. If a personal service corporation is denied a deduction for all or part of a payment to an owner-employee, the amount for which the deduction is denied is treated as paid or incurred in the succeeding taxable year. No carryback of a net operating loss is allowed either from or to an applicable election year of a personal service corporation.

Tiered structures

No election to use a taxable year other than a required taxable year may be made by an entity that is part of tiered structure other than a tiered structure comprised of one or more partnerships or S corporations, all having the same taxable year. For example, a June partnership that has traditionally used a taxable year ending June 30 is owned by calendar year individuals and an S corporation that has also traditionally used a taxable year ending June 30. The partnership and S corporation may make elections under this provision to continue to use their taxable years ending June 30, providing the election is made by both entities.

Effective date.—The conference agreement generally has the same effective date as the House bill. A corporation that made an election after September 18, 1986 and before January 1, 1988 (as long as such election has not been revoked) to be treated as an S corporation and to have the calendar year as the taxable year of the S corporation may elect a taxable year under this provision if the deferral period of the taxable year elected is not longer than the shorter of three months or the deferral period of the taxable year used by the corporation prior to its election to be treated as an S corporation.

B. PARTNERSHIP PROVISIONS

1. Certain publicly traded partnerships treated as corporations

Present law

Under present law, a partnership is not subject to tax at the partnership level, but rather, income and loss of the partnership is subject to tax at the partner's level. A partner's share of partnership income is generally determined without regard to whether he receives any corresponding cash distributions. Similarly, partnership deductions, losses and credits are taken into account at the partner level for tax purposes. A corporation, by contrast, generally is subject to tax at the entity level, and distributions with respect to corporate stock generally are subject to tax at the shareholder level.

The Treasury regulations distinguishing partnerships from corporations currently provide that whether a business entity is taxed as a corporation depends on which form of enterprise the entity "more nearly" resembles (Treas. Reg. sec. 301.7701-2(a)). The regulations list six corporate characteristics, two of which are common to corporations and partnerships, and the other four of which are: (1) continuity of life, (2) centralization of management, (3) liability

for corporate debts limited to corporate property, and (4) free transferability of interests. The regulations provide that an association is treated as a corporation (rather than a partnership) for Federal income tax purposes if it has more corporate than non-corporate characteristics. The effect of the regulations generally is to classify an entity as a partnership if it lacks any two of these four corporate characteristics, without further inquiry as to how strong or weak a particular characteristic is or how th evaluation of the factors might affect overall resemblance.[1]

Under present law, if an entity is classified as a partnership, income and loss are subject to tax at the partner level rather than at the partnership level without regard to whether the partnership is engaged in active business activities.

House bill

Under the provision, publicly traded partnerships are treated as corporations for Federal income tax purposes. An exception is provided for certain partnerships, 90 percent or more of whose gross income is passive-type income (as defined for purposes of the provision).

Passive-type income

Passive-type income, for purposes of the provision, is defined as certain interest, dividends, real property rents, gains from the sale or other disposition of real property, and income and gains from certain natural resources activities. Also treated as passive-type income is any gain from the sale or disposition of a capital asset or property described in sec. 1231(b) that is held for the production of income that is treated as passive-type income (e.g., typical commodity pools).

Inadvertent terminations

The bill provides relief from classification as a corporation for tax purposes, where a partnership inadvertently fails to meet the requirement that 90 percent of its gross income be passive-type income. Under this relief provision, if (1) the Secretary determines that the failure was inadvertent, (2) the partnership takes steps within a reasonable time to meet the 90 percent requirement, and (3) the partnership and each holder of an interest in the partnership during the failure period agree to make adjustments determined by the Secretary, then the partnership will be treated as continuing to meet the 90 percent requirement during the failure period. A reasonable time, for this purpose, would be one year, unless otherwise determined in regulations.

Publicly traded partnerships

Publicly traded partnerships are defined for purposes of the provision as partnerships whose interests are (1) traded on an established securities market, or (2) offered with the expectation that there will be a secondary market for such interests, or (3) readily

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[1] Treas. Reg. secs. 301.7701-2 and -3; *Larson* v. *Commissioner*, 66 T.C. 159 (1976), acq. 1979-1 C.B. 1.

tradable in a secondary market (or the substantial equivalent thereof).

Treatment as a corporation

The bill provides that, in the case of a partnership that is treated as a corporation under this provision, the partnership is treated as contributing all of its assets (subject to all of its liabilities) to a newly formed corporation in exchange for all of the corporation's stock. The stock of the corporation is treated as distributed to the corporation in complete liquidation of the partnership. In general, the tax consequences to the partnership, the corporation, and the distributee holders of interests in the partnership who become shareholders in the new corporation are governed by secs. 351 (permitting tax-free contributions to corporations that are controlled immediately after the contribution transaction), 731 and 732 (governing the treatment of liquidating distributions from partnerships). Rules applicable to recognition of income upon recapture of tax benefits also apply.

Income from publicly traded partnerships that are classified as corporations under the bill generally is treated as dividend income. Regardless of whether such income is characterized as income or gain (e.g., depending on whether it represents a distribution of earnings and profits under section 301), income from such entities is properly treated as portfolio income for purposes of the passive loss rule.

The provision is effective after October 13, 1987, except for existing partnerships. An existing partnership is any partnership publicly traded on October 13, 1987.

An existing partnership also includes a partnership with respect to which a registration statement was filed with the Securities and Exchange Commission on or before October 13, 1987, stating in such registration statement as of October 13, 1987, that the partnership will or intends to publicly trade interests or units including by application for listing on any national securities exchange or local exchange or by trading in an over-the-counter market which results in interests or units so registered to be listed on such exchange or available for trading in an over-the-counter market within a reasonable time after such registration becomes effective. The committee does not intend to grandfather partnerships where registration statements filed on or before October 13, 1987, indicate that there is a possibility (e.g., the general partner may determine) that the interests or units may trade in the future, as opposed to indicating a determination that at the time the partnership is registered with the SEC, trading will occur within a reasonable time after the registration becoming effective.

An existing partnership ceases to be treated as such on the first day after October 13, 1987, on which there has been a substantial expansion of the partnership, or the activities of the partnership have been substantially changed. Any partnership not treated as an existing partnership, that becomes publicly traded after October 13, 1987, is treated as a corporation for tax purposes upon being publicly traded (unless the exception relating to passive-type income applies).

The provision becomes effective with respect to partnerships theretofore grandfathered under the provision for taxable years beginning after December 31, 1994.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with modifications.

Under the conference agreement, as under the House bill, a publicly traded partnership is treated as a corporation unless 90 percent or more of its gross income consists of qualifying income.

As under the House bill, the provision does not apply to any partnership that would be described in sec. 851(a) if it were a domestic corporation. Thus, a publicly traded partnership that is registered under the Investment Company Act of 1940 generally is treated as a corporation under the provision. The conference agreement provides an exception to this rule, however, to the extent provided in regulations, in the case of a partnership that is registered under the Investment Company Act of 1940, and a principal activity of which is the buying and selling of commodities or options, futures or forward contracts with respect to commodities (including foreign currency transactions of a commodity pool). Thus, for example, an existing partnership that is required to register under the 1940 Act because it is engaged in the business of investing in securities, and a principal activity of which is the buying and selling of such commodities (or futures, options or forward contracts with respect to such commodities), is treated as a partnership as provided in Treasury regulations.

Passive-type income

Under the conference agreement, passive-type income includes interest, dividends, real property rents, gain from the disposition of real property, and income and gains from certain natural resources activities. Passive-type income also includes gain from disposition of a capital asset or property described in section 1231(b) that is held for the production of income that is passive-type income. In addition, passive-type income includes income and gains from commodities (not described in section 1221(1)) or futures, options or forward contracts with respect to such commodities (including foreign currency transactions of a commodity pool) in the case of partnerships, a principal activity of which is the buying and selling of such commodities, futures, options or forward contracts (i.e., typical commodity pools).

In determining whether 90 percent of a partnership's gross income is passive-type income in the case of the sale or other disposition of real property described in section 1221(1) (i.e., inventory-type property or property held primarily for sale to customers), gross income is not reduced by inventory costs taken into account in determining the gain from the disposition of the real property.

Income and gains from certain activities with respect to minerals or natural resources are treated as passive-type income. Specifically, natural resources include fertilizer geothermal energy, and

timber, as well as oil, gas or products thereof. For this purpose, fertilizer, includes plant nutrients such as sulphur, phosphate, potash and nitrogen that are used for the production of crops and phosphate-based livestock feed. For this purpose, oil, gas, or products thereof means gasoline, kerosene, number 2 fuel oil, refined lubricating oils, diesel fuel, methane, butane, propane, and similar products which are recovered from petroleum refineries or field facilities. Oil, gas, or products thereof are not intended to encompass oil or gas products that are produced by additional processing beyond that of petroleum refineries or field facilities, such as plastics or similar petroleum derivatives. Income of certain partnerships whose exclusive activities are transportation and marketing activities is not treated as passive-type income. For example, the income of a partnership whose exclusive activity is transporting refined petroleum products by pipeline is intended to be treated as passive-type income, but the income of a partnership whose exclusive activities are transporting refined petroleum products by truck, or retail marketing with respect to refined petroleum products (e.g., gas station operations) is not intended to be treated as passive-type income.

In determining whether income is treated as passive-type income under the provision, in the case of interest and real property rents, it is not intended that amounts contingent on profits be treated as interest or rent. Interest or rent (or other amounts) contingent on profits involves a greater degree of risk, and also a greater potential for economic gain, than a fixed (or even a market-indexed) rate of interest or rent, and thus is more properly regarded as from an underlying active business activity. Under the provision, the determination of whether real property rents based on gross sales are passive-type income is made in accordance with the rules of section 856(d), without regard to section 856(d)(2)(C). Thus, real property rents based on a fixed percentage of receipts or of gross sales are not excluded from rents that are treated as passive-type income. Passive-type rental income does not include income from rental or leasing of personal property.

Publicly traded partnerships

Under the conference agreement, publicly traded partnerships are defined as partnerships whose interests are (1) traded on an established securities market, or (2) readily tradable on a secondary market (or the substantial equivalent thereof).

For this purpose, an established securities market includes any national securities exchange registered under the Securities Exchange Act of 1934 or exempted from registration because of the limited volume of transactions, and any local exchange. It also includes any over the counter market. An over the counter market is characterized by an interdealer quotation system which regularly disseminates quotations of obligations by identified brokers or dealers, by electronic means or otherwise.

A publicly traded partnership also includes a partnership whose interests are readily tradable on a secondary market (or the substantial equivalent thereof). The conferees intend that this test be applied to encompass in the definition of publicly traded partnerships those partnerships that are not traded on established securi-

ties markets, but whose partners are nevertheless readily able to buy, sell or exchange their partnership interests in a manner that is comparable, economically, to trading on established securities markets. The conferees intend that substance rather than form determine whether a partnership is treated as publicly traded; whether public trading takes place on an established securities market or elsewhere is not determinative.

A secondary market is generally indicated by the existence of a person standing ready to make a market in the interest. An interest is treated as readily tradable if the interest is regularly quoted by persons such as brokers or dealers who are making a market in the interest. (See Temp. Treas. Reg. section 15a.453-1(e)(4)(iii).) Thus, for example, an interest is readily tradable in a secondary market where the interest is traded on a market essentially equivalent to an over the counter market.

The substantial equivalent of a secondary market exists where there is not an identifiable market maker but the holder of an interest has a readily available, regular and ongoing opportunity to sell or exchange his interest through a public means of obtaining or providing information of offers to buy, sell or exchange interests. Similarly, the substantial equivalent of a secondary market exists where prospective buyers and sellers have the opportunity to buy, sell or exchange interests in a time frame and with the regularity and continuity that the existence of a market maker would provide.

If interests can be traded in a market that is publicly available, but offers to buy or sell interests are normally not accepted in a time frame comparable to that which would be available on a secondary market, then the interests are not treated as readily tradeable on the substantial equivalent of a secondary market. For example, if interests are quoted and traded on an irregular basis as a result of bid and asked prices listed on a computerized system, and such interests cannot normally be disposed of within the time that they could be disposed of on an over the counter market, then the interests are not considered as readily tradeable on the substantial equivalent of a secondary market.

In addition, it is not intended that partnership interests be treated as readily tradable on a secondary market or the substantial equivalent of a secondary market where there are occasional accommodation trades of partnership interests (e.g., where the general partner or the partnership sometimes purchases interests from other partners, not pursuant to a put or call right, or where the underwriter that handled the issuance of the partnership interests occasionally arranges such accommodation trades. Similarly, where the general partner provides information to its partners regarding such partners' desire to buy or sell interests to each other, or arranges such transfers between partners, without offering to buy or redeem interests or issue additional interests to such partners, a secondary market or the substantial equivalent of a secondary market is not created.

The existence of a buy-sell agreement among the partners, without more, will not cause a partnership to be treated as publicly traded. Nor will the occasional and irregular repurchase or redemption by the partnership, or acquisition by the general partner,

of interests in the partnership, cause the partnership to be considered as publicly traded under the provision. A regular plan of redemptions or repurchases, or similar acquisitions of interests in the partnership such that holders of interests have readily available, regular and ongoing opportunities to dispose of their interests, indicates that the interests are readily tradable on what is the substantial equivalent of a secondary market.

The conferees intend that the complicity or participation (express or tacit) of the partnership or the general partner is relevant in determining whether there is public trading of its interests. Thus, for example, if the partnership acts to list its interests on an exchange, it is clearly participating in causing its interests to be publicly traded.

A partnership is considered as participating in public trading of its interests where trading is in fact taking place (even though the partnership may not have taken explicit action to permit trading, such as by listing on an exchange), and the partnership agreement imposes no meaningful limitation on partners' ability to readily transfer their interests. For example, a provision for the discretion of the general partner or the partnership to refuse consent to the transfer of an interest in the partnership (or of rights to income or other attributes of an interest in the partnership) does not, without more, prevent a partnership from being considered publicly traded. Similarly, the discretion of the general partner to refuse consent to a transfer if the transfer would cause a termination of the partnership for Federal income tax purposes does not cause the partnership to be treated as not publicly traded. Likewise, if the general partner must consent to any transfer of an interest in the partnership, but the assignment of rights to income (or other attributes) of the partnership is not so limited, the consent requirement does not cause the partnership to be considered as not publicly traded.

Conversely, if the partnership agreement provides that partnership interests may not be transferred (and rights to partnership income or other attributes may not be assigned), or provides that partners have only a restricted and limited right to transfer partnership interests or assign partnership income or other attributes, then the conferees intend that occasional actual transfers of interests or assignments of rights generally will not cause the partnership to be treated as publicly traded. A partner's right to transfer an interest or assign rights is considered as restricted and limited, for this purpose, where the transfer of interests or assignment of rights is permitted only in circumstances such as death or divorce of a partner, gifts, certain types of transfers to related parties (such as intrafamily transfers or transfers within an affiliated group where the ownership of the interest or rights is effectively unchanged), or in the case of an occasional accommodation transfer by a partner.

If interests in a partnership are not traded on an established securities market, and the general partner and the partnership have the right to refuse to recognize trades in a secondary market or the substantial equivalent thereof, and exercise the right by taking such actions as are necessary so that trades or assignments of rights are not in fact recognized (either by the general partner, the partnership, the underwriter, or the depositary or any other agent

of the partnership or general parter), then the partnership interests are not intened to be treated as publicly traded under the provision.

Inadvertent terminations

The relief provision in the case of inadvertent terminations is the same as the House bill, except that the Treasury regulatory authority with respect to adjustments is modified. The conference agreement provides that the partnership may be treated as continuing to meet the 90 percent test with respect to gross income if the partnership agrees to make such adjustments (including adjustments with respect to the partners) as are required by the Treasury Secretary with respect to the period of inadvertent termination (and provided the other two requirements imposed under the House bill and the conference agreement are also satisfied).

Effective date.—The provision is effective for taxable years after December 31, 1987.

The conference agreement provides a grandfather rule similar to the House bill, for partnerships existing on December 17, 1987, and the provision applies to existing partnerships for taxable years beginning after December 31, 1997. A partnership is not treated as an existing partnership if there has been an addition of a substantial new line of business. Dropping a line of business does not cause an existing partnership to cease to be treated as such. For this purpose, a substantial new line of business does not include a line of business which was specifically described as a proposed business activity of the partnership (not including a general grant of authority to conduct any business) in a registration statement or amendment thereto filed on behalf of the partnership with the SEC on or before December 17, 1987, but in which the partnership had not actively engaged on or before December 17, 1987.

As provided in the House bill, an existing partnership includes a partnership that filed a registration statement with the Securities and Exchange Commission on or before December 17, 1987 indicating that the partnership was to be a publicly traded partnership. For this purpose, the tranfer of assets to the partnership and commencement of business, substantially as described or provided for in the registration statement (including subsequent amendments and filings related thereto that do not add descriptions of new lines of business), and the sale of interests in the partnership will not be treated as the addition of a substantial new line of business. It is not intended that the termination (within the meaning of section 708) of such a partnership as a result of the issuance or sale of partnership interests cause the partnership not to be treated as an existing partnership. An existing partnership also includes a partnership that filed a statement with a State regulatory commission on or before December 17, 1987 seeking permission to restructure a portion of a corporation as a publicly traded partnership (whether or not such partnership was actually in existence on December 17, 1987).

2. Treatment of publicly traded partnerships under the passive loss rule

Present law

Under present law, deductions from passive trade or business activities (within the meaning of the passive loss rule (sec. 469)), to the extent they exceed income from such passive activities, generally may not be deducted against other income. Similarly, credits from passive activities generally are limited to the tax attributable to the passive activities. Suspended losses and credits are carried forward and treated as deductions and credits from passive activities in the next year. Suspended losses from an activity are allowed in full when the taxpayer disposes of his entire interest in the activity.

Income from passive activities does not include income such as compensation for services or portfolio income (including interest, dividends, royalties, annuities, and gains from the sale of property held for investment). For this purpose, property held for investment generally does not include an interest in a passive activity.

A passive activity generally is an activity involving the conduct of a trade or business in which the taxpayer does not materially participate. Present law provides that, except as provided in regulations, no interest in a limited partnership as a limited partner is treated as an interest with respect to which the taxpayer materially participates. Present law also provides Treasury regulatory authority to issue regulations requiring net income or gain from a limited partnership to be treated as not from a passive activity. Thus, except to the extent that the Treasury Department may provide in regulations, income from limited partnerships, including publicly traded limited partnerships, may be offset by passive losses from other sources.

House bill

Under the bill, net income from publicly traded partnerships is not treated as passive income for purposes of the passive loss rule. Each partner in a publicly traded partnership treats loss (if any) from the partnership as separate from income and loss from any other publicly traded partnership, and also as separate from any income or loss from passive activities. Net income from publicly traded partnerships is treated as portfolio income under the passive loss rule.

Net losses attributable to the interest in the publicly traded partnership are not allowed against the partner's other income, but rather are suspended and carried forward. Such net losses can be applied against net income from the partnership in the next year (or the next succeeding year in which the holder of an interest in the partnership has net income from the partnership). Upon a complete disposition (within the meaning of the passive loss rule) of the partner's entire interest in the publicly traded partnership, any remaining suspended losses are allowed.

In general, income and loss items attributable to an interest in a publicly traded partnership can offset each other. In the case of publicly traded partnerships with income that is treated as portfolio income (under the passive loss rule as generally applicable) and

losses from business activities, the losses are not intended to be applied against the portfolio income. Partners' shares of the loss may not be applied against their shares of that portfolio income. Thus, partners in publicly traded partnerships cannot offset losses from partnership activities against portfolio income within the partnership that could not be offset against portfolio income derived outside the publicly traded partnership.

Under the House bill, partners in publicly traded partnerships are not allowed any amounts under the special $25,000 allowance for rental real estate activities (regardless of whether such amounts would be allowable under the passive loss rule as generally applicable).

Publicly traded partnerships are defined for purposes of the provision as partnerships whose interests are (1) traded on an established securities market, or (2) offered with the expectation that there will be a secondary market for such interests, or (3) readily tradable in a secondary market (or the substantial equivalent thereof).

The intended overall result is that net losses and credits of a partner from each publicly traded partnership be suspended at the partner level, carried forward (not back) and netted only against income from (or tax liability attributable to) that publicly traded partnership, and that suspended losses are allowed upon a complete disposition of the partner's interest in the partnership.

The provision is effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986. Thus, the provision is effective for taxable years beginning after December 31, 1986.

Senate amendment

The Senate amendment is generally the same as the House bill, with two differences.

First, publicly traded partnerships are defined for purposes of the Senate amendment provision as partnerships whose interests are (1) traded on an established securities market, or (2) readily tradable in a secondary market (or the substantial equivalent thereof).

Second, it is intended under the Senate amendment that a partner be entitled to the $25,000 (deduction equivalent) allowance with respect to credits from the partnership as under present law. Thus, a partner in a publicly traded partnership may utilize his share of partnership low income housing credits and rehabilitation credits against tax liability attributable to non-partnership income to the extent of his unused $25,000 (deduction equivalent) allowance.

Conference agreement

The conference agreement follows the Senate amendment, with a technical modification to provide that the $25,000 allowance of (deduction equivalent) credits applies at the partner level, to the extent the amount of such credits exceeds the partner's regular tax liability attributable to income from the partnership. Such credits are allowable under the partner's $25,000 allowance to the extent that the partner has not fully utilized the allowance with respect to losses and credits from passive activities otherwise allowed under present law sec. 469. The term publicly traded partnership

has the same meaning for this provision as for the provision under the conference agreement treating certain publicly traded partnerships as corporations.

3. Treatment of publicly traded partnerships for unrelated business tax

Present law

Under present law, tax-exempt organizations are subject to tax on income from unrelated businesses. Certain types of income (such as interest and certain rental income) are, however, not treated as unrelated business income. Present law also provides that a partner's distributive share of income from a partnership retains the same character as in the hands of the partnership. Thus, a tax-exempt organization's share of income from a partnership (including a publicly traded partnership) may be treated as unrelated business income, or not, depending on the underlying character of the income to the partnership.

House bill

The bill provides that a tax-exempt organization's share (whether or not distributed) of the gross income of a publicly traded partnership (that is not otherwise treated as a corporation) is treated as gross income derived from an unrelated trade or business, and taxable to the organization. The organization's share of the partnership deductions are allowed in computing the organization's taxable unrelated business income. The amounts includable or deductible under this provision are based on the income and deductions of the partnership for the taxable year of the partnership ending within or with the taxable year of the organization.

A publicly traded partnership has the same meaning for purposes of this provision as under the provision added by sec. 10211 of the bill (section 7704 of the Code).

The provision is effective with respect to partnership interests acquired after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except that the provision is effective with respect to partnership interests acquired after December 17, 1987.

4. Treatment of certain partnership allocations

Present law

Under present law, tax-exempt organizations generally are subject to tax on unrelated business income (section 511). In general, income from debt-financed property is treated as unrelated business income (section 514). An exception from the unrelated business income tax is provided in the case of debt-financed real property of a partnership that includes a qualified pension plan, educational organization or title holding company (i.e., a qualified tax-

exempt organization) (section 514(c)(9)(C)). The exception applies as long as the property is not leased back to the seller and certain other requirements are met, and as long as the principal purpose of any disproportionate allocation to a tax exempt organization is not the avoidance of income tax.

House bill

The bill provides that the exception from treatment of income from debt-financed real property as unrelated business income is available only if certain requirements are met. In addition to the requirements of present law, the bill requires that either (1) each partner be a qualified tax-exempt organization, or (2) if any partner is not a tax-exempt organization, each allocation to a partner that is a qualified tax-exempt organization be (a) consistent with such organization's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and (b) the allocation has substantial economic effect within the meaning of the partnership tax rules. The provision retains the rule of present law that an interest in a mortgage is not treated as real property.

The provision applies to property acquired after October 13, 1987. An exception is provided for property acquired pursuant to a binding contract in effect on October 13, 1987, and at all times thereafter before the property was acquired.

Senate amendment

No provision.

Conference agreement

In general

The conference agreement generally follows the House bill, but adds a rule permitting certain types of disproportionate allocations provided the allocations met certain requirements.

Disproportionate allocations

Under the conference agreement, income from debt-financed real property of a partnership that includes both tax-exempt and taxable organizations can qualify under the unrelated business income exception if each allocation to a tax-exempt organization that is a partner is a qualified allocation (within the meaning of section 168(h)(6)), or if the partnership meets the requirements of a new rule allowing certain disproportionate allocations (section 514(c)(9)(E)). A partnership satisfies the disproportionate allocation rule if throughout the entire period that a tax-exempt organization is a partner in the partnership (i) no distributive share of overall partnership loss allocable to a taxable partner can exceed such partner's smallest distributive share of overall partnership income for any taxable year, (ii) no distributive share of overall partnership income allocable to a tax-exempt partner can exceed such partner's smallest distributive share of overall partnership loss for any taxable year, and (iii) each partnership allocation has substantial economic effect within the meaning of section 704(b). The con-

ferees also intend that, in order to satisfy the disproportionate allocation rule, the allocation of items of credit and basis must be made in a manner that is consistent with the limitations on the allocation of overall partnership loss.

Under the disproportionate allocation rule, the exception from unrelated business income treatment is available only if the requirements of the rule are satisfied with respect to each partner. That is, the requirements of the provision must be met with respect to disproportionate allocations to each partner, rather than disproportionate allocations to tax-exempt partners as a group and to taxable partners as a group. Unless the partners' distributive shares of net income or loss will satisfy the requirements of the provision in each taxable year in which a tax-exempt organization is a partner in the partnership, the income from the partnership does not qualify under the unrelated business income exception.

This rule permits separate allocation of items of income, gain, loss and deduction rather than requiring that every item be allocated in the same ratio or requiring only allocations of bottom line profit or loss. The determination of whether the requirements of the rule are satisfied must be made on the basis of each partner's distributive share of overall partnership income or overall partnership loss for each taxable year, taking into account any item allocations. Overall partnership income for any year means the amount, if any, by which the items of partnership income and gain for the year exceeds the items of partnership deduction and loss for such year. Overall partnership loss for any taxable year means the amount, if any, by which the items of partnership deduction and loss for the year exceed the items of partnership income and gain for such year.

It is intended that the disproportionate allocation rule be applied by looking to the provisions of the partnership agreement with respect to each partner's distributive share. The partnership agreement is intended to include any side agreements or separate understandings among the partners. If it is not clear under the terms of the partnership agreement that the allocations meet the requirements of the provision, the income of the partnership does not qualify under the unrelated business income exception. Where the agreement permits allocations that do not satisfy the disproportionate allocation rule at the first time the partnership includes a tax-exempt partner, then the income of the partnership does not qualify under the unrelated business income exception.

Changes in, or amendments to, the allocation provisions of the partnership agreement resulting in disproportionate allocations that would not have satisfied the general rule when a tax-exempt organization first became a partner, will cause the income of the partnership not to qualify under the unrelated business income exception at the time of the change, including open years. It is intended that particular scrutiny be applied to changes to the partnership allocation provisions that are not accompanied by changes in the economics of the partnership arrangement (e.g., not accompanied by the admission of new partners or by capital contributions to the partnership), because of the possibility that such changes may have been previously contemplated.

Allocations that are not expressed in percentages (such as allocations based on economic contingencies or allocations of flat dollar amounts) may not qualify under the provision unless it can be shown that in all circumstances they will satisfy the disproportionate disallowance rule. For example, an allocation of the first $500 of overall partnership loss to a partner cannot satisfy the requirements of the provision because it is not clear what percentage of overall partnership loss such an amount would be for any particular taxable year. Conversely, an allocation of 50 percent of overall partnership loss, up to the amount of the partner's capital account, could satisfy the requirements of the provision.

Example.—The operation of the disproportionate allocation rule is illustrated as follows. A partnership is formed by a taxable partner and a tax-exempt partner, and has debt-financed real property. In years 1 through 5 of the partnership, overall partnership income is allocated 60 percent to the tax-exempt partner and 40 percent to the taxable partner, while overall partnership loss is allocated 80 percent to the tax-exempt partner and 20 percent to the taxable partner. In years 6 through 10 of the partnership, overall partnership income is allocated 40 percent to the tax-exempt partner and 60 percent to the taxable partner, while overall partnership loss is allocated 20 percent to the tax-exempt partner and 80 percent to the taxable partner. The allocations do not qualify under the provision, because the tax-exempt partner's smallest share of loss is 20 percent, and this is exceeded by the allocation to him of 60 percent (in years 1 through 5) and 40 percent (in years 6 through 10) of the overall partnership income. The largest share of income that can be allocated to him consistently with the provision is 20 percent. Any portion of partnership income from 0 to 20 percent can be allocated to him, however, consistently with the provision. Similarly, the largest share of loss that can be allocated to the taxable partner is 40 percent (i.e., his smallest share of overall partnership income).

Chargebacks

In addition, the provision permits (except as otherwise provided in regulations) chargebacks of income or loss to particular partners to offset the amount of prior disproportionate allocations of loss or income that were consistent with the general rule. Thus, disproportionate allocations of overall partnership income may be made to a tax-exempt partner, and overall partnership loss to a taxable partner, to offset such a prior disproportionate allocation. The amount of the chargeback cannot exceed the amount of the prior allocation, and must be made in the same ratio as the prior allocation. Thus, chargebacks may be slower, but not faster, than they might otherwise be absent this restriction.

Example.—For example, a partnership allocates each item of partnership income, gain, loss, or deduction 50 percent to the tax-exempt partner and 50 percent to the taxable partner, except that the first $1,000 of overall partnership loss is allocated 80 percent to the tax-exempt partner and 20 percent to the taxable partner. In 1988, the partnership has an overall partnership loss of $1,000, which is allocated $800 to the tax-exempt partner and $200 to the taxable partner. In 1989, the partnership has overall partnership

income of $500 that may be disproportionately allocated to the tax-exempt partner to offset the disproportionate allocation of loss to such partner in 1988 without violating the general rule. This income chargeback, however, must be made in the same 80/20 ratio at which the disproportionate allocation of loss was made to comply with the special rule for chargebacks. Thus, no more than $400 of income can be charged back to the tax-exempt partner in 1989 in order to comply with the disproportionate allocation rule.

Preferred returns and guaranteed payments

The provision also grants Treasury regulatory authority to provide for reasonable preferred returns (i.e., priority cash distributions) or reasonable guaranteed payments (within the meaning cf section 707(c)). It is intended that such regulatory authority be exercised consistently with the purpose of the provision to limit the transfer of tax benefits from tax-exempt partners to taxable partners, whether through deferral of income to the taxable partner by virtue of directing income to the tax-exempt partner, or through providing shelter opportunities to the taxable partner by virtue of directing losses and deductions to the taxable partner.

Effective date.—The provision is effective for property acquired by the partnership after October 13, 1987, and for partnership interests acquired after October 13, 1987. An exception is provided for property acquired by, or constructed for, the partnership pursuant to a binding contract in effect on October 13, 1987, and at all times thereafter before the property is acquired.

5. Collection of tax from partnerships

Present law

Under present law, each partnership is required to file a partnership return setting forth the partnership income, deductions, and credits, and each partner's distributive share of these items. In general, each partner is required to treat items on his or her own income tax return consistently with the treatment on the partnership return.

The proper tax treatment of partnership items generally is administratively and judicially determined at the partnership level rather than in separate proceedings with each partner.[2] Upon a determination that the partnership has underreported the amount of net income shown on its return, the Internal Revenue Service may then proceed to assess and collect from each partner any additional income tax owed by that partner resulting from the determination.

House bill

The bill generally provides that the Internal Revenue Service may collect underpayments of tax resulting from administrative or judicial determinations with registered partnerships from the partnership itself, as well as from each partner.[3]

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[2] These rules were added to the Code in 1982 for taxable years beginning after 1982. Therefore the Internal Revenue Service has had relatively little experience administering partnership level proceedings.

[3] For purposes of this discussion, the term "partner" includes any taxpayer with an underpayment resulting from the partnership determination.

Under the bill, any shortfall of tax resulting from an applicable return adjustment must be paid by the partnership on notice and demand by the Internal Revenue Service in the same manner as a tax imposed on the partnership.

The amount of shortfall in tax for any taxable year equals (1) the applicable percentage of the sum of amount by which the amount of income or gains determined in accordance with the applicable return adjustment exceeds the amount of income or gains shown on the partnership return plus the amount by which the deductions and losses shown on the partnership return exceed the deductions and losses determined in accordance with the applicable return adjustment plus (2) the amount by which the aggregate amount of credits shown on the partnership return exceeds the amount determined in accordance with the applicable return adjustment.[4] For this purpose, the applicable percentage is the highest rate of tax in effect for the taxable year for either individuals (under section 1) or corporations (under section 11). For example, the applicable percentage for a calendar year 1988 partnership would be 34 percent.

The amount of any shortfall in tax for which the partnership is liable is to be reduced by the portion attributable to any item of income, gain, loss, deduction, or credit to the extent the partnership establishes to the satisfaction of the Internal Revenue Service that the item was treated by a partner, either on the partner's original return or an amended return, in accordance with the applicable return adjustment.

This provision will apply to partnerships with interests required to be registered under a Federal or state law regulating securities, or sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities.

The payment by the partnership of any partnership shortfall shall be treated as a payment by each partner of his allocable share of the partnership payment. Each partner's allocable share shall be determined in accordance with the respective interests in the partnership giving rise to partnership shortfall. To the extent the payment by the partnership creates an overpayment with respect to any partner, that partner may file a claim for credit or refund of the overpayment. Under this provision, the partnership has a right to recover any amount paid to the Internal Revenue Service from the partner on whose behalf the payment is made.

This provision applies to taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

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[4] The amount of any income, gain, deduction, loss or credit shall be determined as if the partnership were an individual, the elections under section 617(a) and 901 were made, and no amount was excluded under section 108.

6. Study of tax treatment of publicly traded partnerships

Present law

Present law provides that a partnership is not subject to tax at the partnership level, but rather, income and loss of the partnership is subject to tax at the partner's level. A partner's share of partnership income is generally determined without regard to whether he receives any corresponding cash distributions. Thus, under present law, partnerships generally are treated as conduits.

House bill

The bill provides that the Secretary of the Treasury shall conduct a study of the issue of treating publicly traded limited partnerships (and other partnerships which significantly resemble corporations) as corporations for Federal income tax purposes, including the issues of disincorporation and opportunities for avoidance of the corporate tax.

The Secretary is required to submit a report on the study, with such recommendations as the Secretary deems appropriate, to the House Committee on Ways and Means and the Senate Committee on Finance, no later than January 1, 1989.

Senate amendment

The amendment provides that the Secretary of the Treasury or his delegate shall conduct a study of compliance and administrative issues relating to the tax treatment of publicly traded partnerships and other large partnerships.

The Secretary is required to submit a report on the study, with such recommendations as the Secretary deems appropriate, to the House Committee on Ways and Means and the Senate Committee on Finance no later than January 1, 1989.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. Thus, the agreement provides that the Secretary of the Treasury or his delegate shall conduct a study of the issue of treating publicly traded limited partnerships (and other partnerships which significantly resemble corporations) as corporations for Federal income tax purposes, including the issues of disincorporation and opportunities for avoidance of the corporate tax. In addition, the study shall address compliance and administrative issues relating to the tax treatment of publicly traded partnerships and other large partnerships. In connection with these compliance and administrative issues, the study shall examine the issues of imposing collection of tax at the partnership level and withholding of tax at the partnership level, and shall make recommendations as to appropriate means of simplifying and improving procedures for audits of and assessments of publicly traded and other partnerships and their partners.

The Secretary is required to submit a report on the study, with appropriate recommendations, to the House Committee on Ways and Means and the Senate Committee on Finance no later than January 1, 1989. An interim report on the administrative and compliance issues is due May 1, 1988.

C. CORPORATE PROVISIONS

1. Computation of earnings and profits for purposes of intercorporate dividends and stock basis adjustments (overruling of *Woods Investment Co.* case)

Present law

Treasury regulations require a corporation to adjust its basis in the stock of a subsidiary with which it files a consolidated return by reference to changes in the subsidiary's earnings and profits. The parent corporation increases its basis in the stock of a subsidiary by the amount of the undistributed net earning and profits of the subsidiary for the taxable year, and reduces its basis in such stock by the amount of any deficit in earnings and profits, among other adjustments.

At the time the current consolidated return regulations were issued, differences between earnings and profits and taxable income were permanent differences, and adjustments to the basis of the assets of a subsidiary "inside" basis) were reflected immediately as adjustments to the parent corporation's basis in stock of the subsidiary "outside" basis). Subsequently, Congress enacted amendments to the provisions of the Code defining earnings and profits to prevent tax avoidance on distributions to individual shareholders. These amendments created timing differences between the recognition of taxable income and increases in earnings and profits. In a consolidated return context, the amendments had the unintended effect of creating a disparity between the rate at which these items reduce or increase a parent's basis in the stock of its subsidiary, and the rate at which they reduce or increase the group's consolidated taxable income. The resulting disparity between inside and outside basis may allow an inappropriate reduction in gain, or creation of a loss, on the disposition of the stock of the subsidiary.

In *Woods Investment Co.* v. *Commissioner,* 85 T. C. 274 (1985), the Tax Court upheld the taxpayer's right to the benefits conferred by a literal application of the statute and the investment adjustment rules of the consolidated return regulations, suggesting that it was within the authority of the Treasury Department to amend its regulations to address the problem. No amendments have been made to the regulations in this respect.

Where an insolvent consolidated subsidiary realizes cancellation of indebtedness income, the earnings and profits of the subsidiary may be increased by the amount of such income, even though this amount may be excluded from taxable income. If so, the parent corporation's basis in the stock is increased (or its "excess loss account", or negative basis, is reduced) by an amount that has not been reflected in the group's taxable income.

A benefit similar to that at issue in the *Woods* case may exist where the distributor and distributee do not file a consolidated return. Special rules prevent the occurrence of these distortions in certain circumstances. If a 20-percent or more corporate shareholder receives a distribution from another corporation that would otherwise qualify for the dividends received deduction, the taxable income of the shareholder (and its adjusted basis in the stock of the

distributing corporation) is determined by ignoring certain adjustments otherwise required in determining the earnings and profits of the distributing corporation (sec. 301(f)). That is, the earnings and profits treatment of the items is conformed to the taxable income treatment. These special conformity rules do not apply, however, to depreciation.

House bill

Under the House bill, solely for purposes of determining gain or loss on disposition, a parent corporation's basis in the stock of a subsidiary with which it files a consolidated return "intragroup stock") is to be determined by computing earnings and profits of the subsidiary without regard to sections 312 (k) and (n). Thus, the parent's basis for purposes of determining gain or loss on disposition of the stock is computed as if, throughout the period of the subsidiary's affiliation with the parent, the subsidiary's earnings and profits had been computed without regard to the special adjustments for depreciation and other items.

In addition, the bill provides that earnings and profits for this purpose do not include any cancellation of indebtedness income of the subsidiary excluded under section 108 to the extent such income did not reduce basis in assets or other tax attributes.

Finally, the bill expands the provision modifying the definition of earnings and profits in the case of distributions to 20-percent or more corporate shareholder to include adjustments for accelerated depreciation (sec. 301(f)).

The amendments relating to the computation of earnings and profits for purposes of the determining basis of intragroup stock and stock of a nonconsolidated subsidiary apply to stock held on or acquired after October 13, 1987. The amendment relating to the computation of earnings and profits of a nonconsolidated subsidiary for purposes of characterizing a distribution generally applies to distributions after October 13, 1987.

Senate amendment

In general, the Senate amendment is the same as House bill, except that the provisions are effective for distributions or dispositions after October 15, 1987. Exceptions to the provisions relating to basis of stock in a subsidiary are provided for dispositions pursuant to a contract that was binding on October 16, 1987.

Conference agreement

The conference agreement follows the Senate amendment, with certain modifications and clarifications.

The rationale of the provision relating to intragroup stock is that generally adjustments to the outside basis of stock should parallel the adjustments made to inside asset basis. Thus, for example, the provision will cause an adjustment to a parent corporation's basis in the stock of a consolidated subsidiary based on the tax depreciation claimed by the subsidiary during the period the subsidiary was a member of the parent's affiliated group, rather than an adjustment based on the depreciation claimed by the subsidiary for earnings and profits purposes. The Treasury Department shall promul-

gate regulations addressing cases where a prior owner was not subject to this provision.

The conference agreement clarifies that the term intragroup stock includes any property the basis of which is determined in whole or in part by reference to basis of stock in a corporation that was formerly a member of an affiliated group filing consolidated returns. Thus, if stock in a consolidated subsidiary is disposed of in a nonrecognition transaction, the owning member's basis in any stock received in the transaction for purposes of any subsequent disposition will reflect the adjustments required by this provision. The term also includes stock in a corporation that was formerly a member of a consolidated group, but is not a member of the group at the time of the disposition. Thus, for example, if X Corporation sold 50 percent of its wholly owned consolidated subsidiary, Y Corporation, in 1988, and the remaining 50 percent in 1989, the gain on the sale of each block would be computed after making the adjustments prescribed in this provision to the basis of the stock.[5]

The conferees do not intend the application of this provision to require duplication of any downward adjustments to basis otherwise required under the consolidated return regulations. For example, if an owning member is required to reduce its basis in a subsidiary's stock (as of the beginning of a subsidiary's first separate return year after disaffiliation occurs) by the excess of its net positive adjustments with respect to the stock over its net negative adjustments for prior consolidated return years, the provisi on would not require any duplicative reduction in basis.[6]

There is no intention, in requiring these adjustments to basis for the limited purpose of determining gain or loss on disposition, to affect the earnings and profits of the subsidiary or any other member of the group for any other purpose, such as the character of a distribution. Nor is it intended that this provision affect the mechanism by which the consolidated return regulations require earnings and profits of members of a consolidated group to reflect annual increases or decreases in the earnings and profits of all lower-tier subsidiaries.[7] Rather, the provision will require this recomputation of earnings and profits to be made only in the year of the disposition of the subsidiary, immediately before such disposition. Therefore, the existing mechanism for the "tiering" of earnings and profits by reference to basis adjustments in the stock of a subsidiary will be unaffected. There is no intention, however, to preclude the Treasury Department from accomplishing this result directly, by requiring a member to increase its earnings and profits without regard to basis adjustments.

It is intended that this provision apply in the case of any transaction or event that is treated as a disposition of the stock of the subsidiary under the consolidated return regulations, whether or

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[5] Likewise, if the first sale occurred before the effective date of this provision and the second occurred after the effective date, the provision would apply in determining the basis of the second block of stock.

[6] See Treas. Reg. sec. 1.1502-32(g). In such a case, the recomputation of earnings and profits without regard to sections 312(k) and (n) should be irrelevant because the subsidiary's earnings and profits increases and deficits during affiliation would have been reversed, and hence no longer reflected in the owning member's basis in the subsidiary's stock.

[7] See Treas. Reg. sec. 1.1502-33(c)(4)(ii), requiring, for taxable years after 1975, adjustment of earnings and profits based on adjustments to basis in stock of subsidiaries.

not there is an actual disposition. Thus, for example, if the stock of a subsidiary becomes worthless or the group ceases to file a consolidated return, the amount of any excess loss account with respect to the subsidiary (and therefore the amount of income recognized by the group) will be determined after making the adjustments prescribed in this provision.[8]

Finally, the conference agreement limits the exception from the requirement that earnings and profits for purposes of this provision not take into account discharge of indebtedness income excluded under section 108. The exception applies where the amount excluded was applied to reduce tax attributes, such as net operating losses, that were immediately reflected in basis under the consolidated return regulations. For example, the exception does not apply where the amount excluded was applied to reduce the basis of property. For periods after the effective date of section 312(l)(1), earnings and profits will not be increased to the extent of such basis reduction by virtue of that provision. For any period during which section 312(l)(1) was inapplicable, and hence earnings and profits may have been increased by discharge of indebtedness income notwithstanding a reduction in basis of assets, earnings and profits will be computed without regard to any amount excluded under section 108.

The provisions are generally effective for distributions and dispositions of intragroup stock after December 15, 1987. Exceptions are provided for dispositions of stock after that. Date pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before that date. These exceptions apply only if the stock is disposed of before January 1, 1989.

2. Denial of graduated rates for personal service corporations

Present law

Under present law, a corporation is subject to a tax at the rate of 15 percent on the first $50,000 of taxable income, 25 percent on taxable income over $50,000 but not over $75,000, and 34 percent on taxable income over $75,000. The benefits of the graduated rates are phased out for corporations with income in excess of $100,000.

House bill

The taxable income of a qualified personal service corporation is taxed at a flat rate of 34 percent. A qualified personal service corporation for this purpose is one eligible for relief from the provision requiring C corporations to use the accrual method of accounting (sec. 448). Thus, a personal service corporation is one substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and substantially all of the stock of which is held by employees or retired employees or by their estates.

The provision is effective for taxable years beginning after December 31, 1987.

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[8] See Treas. Reg. sec. 1.1502-19(b).

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

3. Limitation on consolidated return pass-through

Present law

Under present law, corporations may file consolidated tax returns if they are members of an affiliated group of corporations. In general, a parent and a subsidiary corporation are members of an affiliated group for this purpose if the parent corporation owns stock of the subsidiary possessing at least 80 percent of the total voting power and value of all the subsidiary stock, excluding certain nonvoting preferred stock (secs. 1501 and 1504 of the Code).

Under the consolidated return regulations, the consolidated tax return of a parent corporation and an affiliated subsidiary generally allows 100 percent of a subsidiary's losses to offset the parent's income, or, conversely, allows 100 percent of a subsidiary's income to be offset by the parent's losses, even though the parent may own less than 100 percent of the subsidiary's stock.

The consolidated return regulations generally require the parent corporation to adjust its basis in the subsidiary stock upward for the parent's allocable share of undistributed earnings and profits of the subsidiary, and downward for the parent's allocable share of its deficits in earnings and profits (though no downward adjustment for earnings and profits deficits is required with respect to preferred stock owned by the parent).

House bill

If a member of an affiliated group of corporations owns less than 100 percent of the stock of a subsidiary that is a member of the group, the House bill denies consolidation of the percentage of the subsidiary's income or loss allocable to stock owned by nonmembers. All classes of stock are counted for this purpose, including nonvoting preferred stock described in section 1504(a)(4) of the Code.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

4. Tax benefited transfers through intercorporate dividends received deduction; preferred stock loss transfers

Present law

Under present law, corporations owning less than 80 percent of the stock of a corporation are entitled to a deduction equal to 80 percent of the dividends received from a domestic corporation. (A

100 percent deduction may apply to dividends received by an 80-percent or more corporate parent).

House bill

Under the House bill, the 80-percent dividends received deduction for any corporation owning less than 80 percent of the stock of the distributing corporation is reduced to 75 percent of the amount to the dividend.

The partial dividends received deduction is eliminated entirely for dividends on stock that has certain non-stock characteristics, or characteristics that enhance the likelihood that the holder may recover the principal amount or maintain a certain dividend level, or both (whether from the issuer or from others on resale or otherwise). Such stock includes any stock that is not counted for purposes of determining whether corporations are entitled to file a consolidated tax return under sections 1504(a) (4) or (5), as well as any stock that is not counted for purposes of determining whether there has been an ownership change for purposes of the special loss limitations of section 382 of the Code (sec. 382(k)(6)).

Senate amendment

No provision.

Conference agreement

The conference agreement generally follows the provision of the House bill reducing the 80-percent dividends received deduction, but with several modifications. First, the 80-percent deduction is reduced to 70 percent of the amount of the dividend. Second, the reduction applies only if the recipient corporation owns less than 20 percent of the voting power and value of stock (as defined in section 1504 of the Code) of the issuing corporation; the 80-percent dividends received deduction is preserved for 20-percent or more (but less than 80-percent) corporate shareholders.

The conference agreement follows the Senate amendment with respect to the elimination of the partial dividends received deduction for dividends on stock with certain non-stock characteristics.

The reduction in the dividends received deduction for less than 20-percent shareholders is effective for dividends received or accrued after December 31, 1987, in taxable years ending after that date.

5. Deduction of interest on corporate acquisition indebtedness

Present law

In general, corporate earnings distributed as dividends on equity are taxed at both the corporate level (when earned by the corporation) and at the shareholder level (when distributed). By contrast, corporate earnings distributed in the form of interest on corporate debt bear no corporate-level tax because interest is deductible by the distributing corporation.

Section 279 of the Code in limited circumstances denies a deduction for interest on corporate acquisitions. The limitation applies to interest in excess of $5 million per year incurred by a corporation with respect to debt obligations issued to provide consideration for

the acquisition of stock, or two-thirds of the assets of, another corporation, if each of the following conditions exists: (1) the debt is substantially subordinated; (2) the debt carries an equity participation (for example, includes warrants to purchase stock of the issuer or is convertible into stock of the issuer); and (3) the issuer is thinly capitalized (i.e., has an excessive debt-to-equity ratio) or projected annual earnings do not exceed three times annual interest costs.

House bill

Under the House bill, deductions are denied for interest in excess of $5 million per year incurred by a corporation with respect to debt supporting either (1) the acquisition of 50 percent or more of the stock of another corporation or (2) the redemption by a corporation of 50 percent or more of its own stock. All acquisitions during any three-year period are aggregated in determining whether one of these 50-percent thresholds is met.

The provision applies to any interest on debt incurred or continued (i.e., directly allocable) in connection with the stock acquisition or redemption. It also applies to any other interest indirectly allocable to the acquisition or redemption. In the case of indirectly allocable interest, the limitation terminates five years after the date of the acquisition.

The interest disallowance provision does not apply if the acquisition is a qualified stock purchase within the meaning of section 338, and an election is made under that section to treat the acquisition as an asset acquisition.

The provision is generally effective for acquisitions or redemptions after October 13, 1987. Exceptions are provided for transactions pursuant to a binding written contract in effect on October 13, 1987, and at all times thereafter prior to the date of the acquisition, and for transactions after October 13, 1987, if there was action by the board of directors, shareholder approval, a letter of intent, a tender offer, or public announcement to shareholders in effect on October 13, 1987, and at all times thereafter, provided the acquisition or redemption is completed before January 1, 1989.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

6. Reduction of tax avoidance in certain corporate dispositions ("mirror" subsidiary transactions)

Present law

Gains on certain distributions to a controlling U.S. corporate shareholder (an 80-percent distributee) are not taxed to the distributing corporation in a liquidation (sec. 337). (Gains on liquidating distributions to a controlling foreign corporate shareholder generally are taxed to the distributing corporation (sec. 367(e)).

By contrast, a nonliquidating distribution to a controlling U.S. corporate shareholder causes the distributing corporation to recognize gain, though the gain would be deferred if the two corpora-

tions were filing consolidated returns until a disposition of the distributed property or the occurrence of certain other events (sec. 311 of the Code; Treas. Reg. sec. 1.1502-13). A distribution represents a dividend to the recipient to the extent of the current or accumulated earnings and profits of the distributing corporation, and produces recovery of basis or a capital gain to the extent it exceeds such earnings and profits (sec. 301).

If the recipient of a nonliquidating distribution is a corporation that is affiliated with the distributing corporation (for example, generally where the recipient corporation owns stock in the distributing corporation representing 80 percent or more of its vote and value), the recipient is eligible for a 100 percent dividends-received deduction if the distribution is out of earnings and profits of a taxable year on each day of which the distributing and recipient corporations were members of the affiliated group, and if an election is made. If the two corporations file a consolidated return, the dividend is excluded ("eliminated") from the income of the recipient.

Certain distributions in which stock is distributed to a corporation's shareholders are also tax-free to the distributing corporation, provided that certain statutory and other constraints are met, including a condition that the transaction not be a device for the distribution of earnings and profits and certain other requirements (sec. 355).

A sale of stock of a subsidiary to a related corporation is generally "deemed" to be a dividend to the extent of earnings and profits of the two corporations, and the statute provides specific rules for the movement of earnings and profits and other aspects related to such a dividend (sec. 304). In determining whether two corporations are related for purposes of this rule, certain "back attribution" rules apply with the result that a corporation can be deemed to receive a dividend or other distribution from another corporation in which it owns no stock (sec. 318). In some instances the deemed dividend rules may produce tax results more favorable than an actual sale or an actual dividend.

A corporation or other shareholder that surrenders stock in a complete liquidation in exchange for property distributed in a liquidation generally recognizes capital gain or loss, respectively, to the extent that the value of the property received exceeds or is less than the shareholder's basis in its stock of the liquidating corporation. Under a special provision, however, no gain or loss is recognized by the recipient corporation on liquidation of another corporation if the recipient corporation owns 80 percent of the vote and value of the stock of the liquidating corporation (sec. 332). Foreign shareholders generally are not taxed on the receipt of liquidating distributions.

House bill

The House bill generally treats liquidating distributions to an 80-percent or more corporate shareholder in the same manner as nonliquidating distributions. Thus, the distributing corporation recognizes gain as if the property distributed had been sold to the dis-

tributee at fair market value.[9] Similarly, the consequences for the shareholder are the same as if a nonliquidating distribution had been made of the subsidiary's assets immediately before the liquidation.

The bill retains the result of present law that no gain or loss is recognized by an 80-percent controlling corporate shareholder on the liquidation of a subsidiary, but with a modification. To the extent of the distributing corporation's current or accumulated earnings and profits (including earnings and profits generated by the recognition of any non-deferred gain on the distribution), the amounts distributed to the recipient corporation are treated as a dividend. Similar treatment applies to a foreign corporation that has a U.S. branch engaging in a U.S. trade or business and that liquidates or otherwise terminates its U.S. business.

The bill provides that a distribution of stock will not qualify for nonrecognition under section 355 of the Code if control of a corporation which was conducting such business was acquired in a taxable transaction within the five-year period ending on the date of the distribution through one or more corporations, including the distributing corporation. In addition, any distribution otherwise qualifying under section 355 will be treated in the same manner as a nonqualifying distribution if it is made to a member of the same affiliated group as the distributing corporation.

The bill modifies the provisions of section 304 of the Code in the case of transactions between members of a group controlled by the same corporation (for this purpose, the bill provides that control is determined without regard to the back-attribution rules of sec. 318(a)(3)(C)). In the case of any sale of stock of one member of the group to another member, the transaction is treated as if the stock that is sold had been distributed to the common parent (determined under section 304 without regard to such back-attribution) and recontributed to the recipient corporation, and as if the cash or other property that is exchanged had likewise been distributed to the common parent and recontributed to the recipient corporation. The bill also provides the Secretary authority to provide regulations making appropriate adjustments to the members' earnings and profits and to the indirect foreign tax credit provisions, including proper adjustments to the earnings pool as well as recognition of the indirect credit.

The House bill is effective for distributions after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows portions of the House bill, with modifications.

As under present law, gain will not be recognized by a corporation on liquidating distributions to a corporate shareholder directly owning 80 percent (by vote and value) of the stock of the distribut-

[9] For purposes of the liquidation rule (unlike a nonliquidating distribution) loss is also recognized; however, no loss in excess of the gain recognized is permitted.

ing corporation. However, under the conference agreement, gain is recognized on any distribution to a corporation that does not meet the 80-percent test by direct ownership. Thus, for example, the distributing corporation recognizes gain on any distribution to a corporation within an affiliated group filing a consolidated tax return if the distributee would be treated as an 80-percent owner for purposes of section 332 solely by reason of the aggregation rules of section 1.1502–34 of the Treasury Regulations.

Treasury Regulations may provide that gain on a distribution to a less than 80-percent owner within an affiliated group filing a consolidated return may be deferred until a recognition event other than the liquidation itself occurs. (Compare Treas. Reg. sec. 1.1502–14(c)(2)).[10] For this purpose, where a portion of the gain on the liquidation is not recognized due to the fact that the liquidating distribution is made to a direct 80-percent corporate owner, the gain on the remaining portions is to be deferred only until the earlier of the time that there is a disposition [10] of the remaining portions or the selling member ceases to be a member of the group. Assume, for example, that a corporation makes a liquidating distribution to two corporate shareholders, one of which (Corporation X) directly owns 80 percent of the stock of the distributee corporation and one of which (Corporation Y) directly owns 20 percent of the stock of the distributee corporation. If there is a direct or indirect disposition of the stock of Corporation X, further deferral would not be permitted for the gains recognized on the liquidating distribution to Corporation Y.

The conference agreement does not modify section 332. Thus, earnings and profits distributed to a corporation that qualifies for nonrecognition treatment under section 332 are not treated as nonliquidating dividend distributions.

Under the conference agreement, in addition to the requirements of present law, section 355 does not apply to any distribution by a corporation if control of the distributing corporation was acquired by a corporate distributee within five years prior to the distribution. For this purpose, all members of an affiliated group are treated as a single corporate distributee.

Under the conference agreement, if stock of a member of an affiliated group is transferred to another member of such group in a transaction described in section 304(a) of the Code, proper adjustments must be made in the bases of intragroup stock and in the earnings and profits of each member of the group to the extent necessary to carry out the purposes of this provision.

As one example, if one subsidiary ("X") in a group sells the stock of its appreciated subsidiary ("Y") to a sister corporation ("Z") in an affiliated group, in a transaction that is treated as a dividend of accumulated earnings and profits of the sister corporation Z to the selling corporation X and a contribution of the transferred corporation Y to the capital of sister corporation Z, adjustments must be made to the stock bases of members of the group so that neither X, Z, nor any other corporation that is part of the same chain of includible corporations (excluding the common parent) may thereaf-

[10] See, e.g., Treas. Reg. sec. 1.1502-13(f).

ter be sold without recognition of the built-in appreciation in the Y stock at the time of the section 304 transaction.

The conference agreement is effective for distributions after December 15, 1987, unless 80 percent of the stock (by vote and value) of the corporation was acquired prior to that date or was acquired after that date pursuant to a binding written contract or tender offer in effect on that date, and the acquisition is completed before January 1, 1989; provided in each transition case the distribution occurs before January 1, 1993. Transition relief is also provided for distributions that were eligible for transition relief from the 1986 Act provision repealing the General Utilities doctrine.

The provision with respect to section 304 applies to transfers after December 15, 1987, when the transfer is between corporations which are members of the same affiliated group on December 15, 1987 or which became members of the same group before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987; provided in each transition case that the transfer occurs before January 1, 1993.

No inference is intended as to the Treasury Department's authority to amend the consolidated return regulations consistent with the purposes of this provision.

7. Special rules for hostile corporate acquisitions and greenmail payments

Present law

Gain on the sale or exchange of corporate stock is generally taxed at regular tax rates. A buyer of a controlling interest in corporate stock may (but is not required to) treat the stock purchase as a taxable purchase of the underlying assets (sec. 338). A deduction is generally allowed for interest paid or incurred during the taxable year.

House bill

Under the House bill, if a corporation makes a qualified stock purchase within the meaning of section 338 and any significant portion of the stock is acquired pursuant to an offer disapproved by a majority of the independent directors of such corporation, the acquiring corporation is treated as having made an election under section 338(a). Accordingly, the target corporation is deemed to have sold all of its assets at fair market value in a taxable transaction. Special rules apply for purposes of determining whether there is a qualified stock purchase and the grossed-up basis of the acquiring corporation's recently purchased stock.

The bill also provides that no deduction is allowed for interest on indebtedness incurred or continued by a corporation to purchase 20 percent or more of the stock of another corporation pursuant to a hostile tender offer.

Finally, the bill provides that a person who receives "greenmail" is subject to a non-deductible 50-percent excise tax on any gain realized on such receipt. Greenmail is defined as any consideration paid by a corporation in redemption of its stock if such stock has been held by the shareholder for less than two years and the shareholder (or any related person or person acting in concert with the

shareholder) made or threatened a public tender offer for stock in the corporation during that period.

The treatment of a hostile qualified stock purchase as an asset acquisition under 338 applies to acquisitions after the date of enactment of the provision. The denial of interest deductions with respect to debt incurred in hostile acquisitions applies to debt incurred after the date of enactment. The 50-percent excise tax on gains attributable to the receipt of greenmail applies to amounts received after the date of enactment.

Senate amendment

No provisions.

Conference agreement

The conference agreement adopts only the House bill provision imposing an excise tax on greenmail, with certain modifications; the agreement follows the Senate amendment with respect to hostile qualified stock purchases and interest on acquisition indebtedness.

The greenmail excise tax does not apply if, prior to the redemption, the redeeming corporation offered to purchase the stock of other shareholders for the same consideration and on the same terms that it redeemed the stock of the taxpayer. The provision is intended to apply where a taxpayer otherwise subject to the provision sells his stock to an entity related to the issuing corporation (e.g., a controlled subsidiary).

The provision is effective for transactions after the date of enactment, unless pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.

8. Limitation on NOL carryforwards of corporation following worthless stock deduction by 50-percent shareholder

Present law

A deduction is allowed for any loss sustained during the taxable year as a result of securities held by the taxpayer becoming worthless. It has been held that, notwithstanding the fact that a worthless stock deduction has been claimed by a parent corporation with respect to stock of a nonconsolidated subsidiary, the net operating loss carryforwards of the subsidiary survive and may be used to offset future income of the subsidiary. *Textron, Inc.* v. *United States,* 561 F.2d 1023 (lst Cir. 1977).

Loss carryforwards of a corporation are limited if there is a more-than-50-percent change in the ownership of its stock during the relevant testing period. The amount of losses that may be used annually to offset post-change income of the corporation is equal to a prescribed rate of return on the net value of the corporation at the time of the change of ownership (sec. 382).

House bill

Under the House bill, if a worthless securities deduction is claimed by a shareholder with respect to stock of a loss company, the shareholder is treated as having acquired the stock as of the

first day of the succeeding taxable year. The shareholder is also treated as not owning such stock during any prior period. Accordingly, if a worthless stock deduction is claimed during the testing period by persons holding more than 50-percent of a loss corporation's stock, net operating loss carryovers of the corporation arising prior to the change may not be used to offset the corporation's post-change income. The provision applies to stock that becomes worthless in taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with certain modifications.

The provision applies only if a worthless stock deduction is claimed by a shareholder who, at any time during the three-year period ending with the year in which the deduction was claimed, owned 50 percent or more of the stock of the corporation.

The provision is effective for stock treated as becoming worthless in taxable years beginning after December 31, 1987.

9. Tax loss mergers and acquisitions

Present law

Special limitations apply to the use of net operating loss carryforwards (NOLs) following an ownership change of the loss corporation—generally, when there has been an increase of more than 50 percentage points in ownership of a loss corporation by certain persons (sec 382). Built-in losses that are recognized following an ownership change are treated as losses subject to limitations if the net built-in loss exceeds a threshold amount (sec. 382(h)). Depreciation deductions with respect to built-in loss property, however, are not treated as losses subject to limitation following an ownership change. Built-in depreciation deductions may be limited in some circumstances under the consolidated return regulations (Treas. Reg. sec. 1.1502-15).

In the case of certain ownership changes occurring in bankruptcy, the special limitations do not apply. However, 50 percent of the excess of the amount of the indebtedness to certain creditors that was cancelled in the proceeding over the fair market value of stock received by such creditors is applied to reduce the net operating losses of the corporation (sec. 382(1)(5)(C)).

If a loss corporation does not experience an ownership change, the use of its losses may be limited in certain circumstances. For example, in the case of partnerships, regulations that are to be effective with the effective date of the Tax Reform Act of 1986 are to limit the tax benefits that may be derived from transactions in which allocations of partnership income are made to a loss partner or to a corporation that is a member of a consolidated group with NOL carryovers under an arrangement that contemplates the diversion of the economic benefit corresponding to such allocation (or

any portion of the economic benefit of the loss corporation's net operating loss) to a higher bracket partner.[11]

Section 269 of the Code may also limit the use of a loss corporation's losses in certain situations where there is a principal purpose of evasion or avoidance of Federal income tax.[12]

House bill

The House bill provides that built-in depreciation is subject to the built-in loss rules of section 382.

The House bill provides that loss carryforwards of a corporation in bankruptcy are reduced by the full amount of the excess of the debt cancelled in the proceeding over the fair market value of the stock given to creditors in exchange for debt.

The House bill provides that loss corporations will be precluded from using their losses to shelter built-in gains of an acquired company recognized within five years of the acquisition. Built-in gains for this purpose includes any item of income which is attributable to periods before the acquisition date.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with respect to built-in depreciation being subject to the built-in loss rules of section 382. The provision is effective for ownership changes occurring after December 15, 1987, unless pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change.

The conference agreement follows the Senate amendment with respect to reducing the loss carryforwards of a corporation in bankruptcy.

The conference agreement generally follows the House bill with respect to loss corporations using their losses to shelter built-in gains of an acquired company recognized within 5 years of the acquisition, but with certain modifications and clarifications. First, the conference agreement clarifies that the provision also applies to companies with built-in gains that are acquired through a liquidation under section 332 or a reorganization under section 368(a)(1)(D). Second, the conference agreement provides an exception to the provision in the case of a consolidation or merger of corporations previously under common control for a 5 year period.

The preacquisition losses that may not be used to shelter built-in gains include built-in losses or items of deduction that have economically accrued prior to the acquisition.

The Treasury Department has regulatory authority to prevent the avoidance of the purposes of the provision through the use of any provision of the Code or regulations, including the provisions of subchapter K. For example (and without limitation), regulations may prevent the use of the so-called "ceiling rule" of section 704(c) of the Code effectively to allocate built-in gain attributable to part-

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[11] H. Rep. No. 99-841, 99th Cong., 2d Sess., pp. 194-195 (1986).

[12] See, e.g., *Briarcliff Candy Corporation* v. *Comm.r*, 54 T.C.M. 667 (1987).

ner to another partner which is a loss corporation. In such circumstances, the Treasury Department shall provide an appropriate mechanism for taking the built-in gain into income without permitting the use of such losses. Regulations pursuant to this authority shall not be effective for any transaction prior to the issuance of additional guidance by the Treasury Department relating to (i) the mechanism to be employed for taking built-in gain into income and (ii) the types of transactions that will be subject to the provision.

For purposes of determining whether the 25 percent built-in gain threshold of section 382(h) is satisfied, it is expected that any contribution of property with any purpose of avoiding the threshold will be disregarded. The Treasury Department may prescribe any more specific rules that may be necessary to prevent the evasion of the purposes of the section through contributions of property to the corporation.

The provision is effective for acquisitions after December 15, 1987, unless the transaction was pursuant to a binding written contract in effect on or before December 15, 1987, or a letter of intent or agreement of merger signed on or before December 15, 1987.

10. LIFO recapture on conversion from C corporation to S corporation

Present law

In general, gain realized when a C corporation liquidates is subject to corporate-level tax. If a C corporation elects to convert to S corporation status and holds assets with a net unrealized "built-in gain" (that is, with a value in excess of basis) at the time of its conversion, the built-in gain is subject to a separate corporate-level tax to the extent it is realized within ten years after the conversion (sec. 1374).

The Internal Revenue Service has stated that the inventory method used by a taxpayer for tax purposes shall be used in determining whether goods disposed of following a conversion to S corporation status were held by the corporation at the time of conversion. Thus, a C corporation using the last-in, first-out (LIFO) method of accounting for its inventory which converts to S corporation status is not taxed on the built-in gain attributable to LIFO inventory to the extent it does not invade LIFO layers during the ten-year period following the conversion.

House bill

Under the House bill, if a C corporation uses the LIFO method for its last taxable year before a subchapter S election becomes effective, it must include in income the LIFO recapture amount for such last taxable year. For this purpose, the LIFO recapture amount is defined as the excess of the inventory's value using a (FIFO) flow assumption over its LIFO value at the close of its last taxable year as a C corporation. Appropriate adjustments to the basis of inventory are allowed to reflect any amount included in income under this provision.

The provision applies to S elections made after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with certain modifications.

The tax attributable to the inclusion in income of the LIFO recapture amount is payable in four equal installments. The first installment must be paid by the due date of the return for the electing corporation's last taxable year as a C corporation. The other installments are due by the respective due dates of the corporation's returns for the three succeeding taxable years. No interest is payable on these installments if they are paid by the respective due dates.

The provision applies in the case of S elections made after December 17, 1987. In the case of elections made after that date and before January 1, 1989, the provision does not apply if, on or before December 17, 1987, the board of directors of the corporation adopted a resolution to make an S election, or a ruling request with respect to the business was filed with the Internal Revenue Service expressing an intent to make such an election, It is intended that this transition rule will apply if a request concerning eligibility for small business corporation status was filed on or before that date by the electing corporation, or by a former parent corporation of the electing corporation that was subsequently merged into the electing corporation.

11. Regulated investment companies

Present law

In order to avoid a penalty excise tax, regulated investment companies (RICs), commonly called "mutual funds," must distribute before January 1 of any year at least 97 percent of their ordinary income earned during the prior calendar year and 90 percent of their capital gain net income for the twelve-month period ending on October 31 of that year.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

Under the conference agreement, the distribution required to avoid the penalty excise tax is increased to 98 percent of capital gain net income.

This applies to calendar years beginning after December 31, 1986.

D. CORPORATE MINIMUM TAX

Present law

Corporations are subject to a minimum tax at a 20 percent rate. One-half of the excess of pre-book income over other alternative minimum taxable income is a preference for taxable years beginning before 1990. For taxable years beginning after 1989, three-fourths of the excess of adjusted currrent earnings over other alternative minimum taxable income is a preference.

House bill

One hundred percent of the excess of pre-book income (for taxable years beginning before 1990) and one hundred percent of adjusted current earnings (for taxable years beginning after 1989) over other alternative minimum taxable income will be a preference for corporations. The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

Present law

Corporations are subject to a minimum tax at a 20 percent rate. One-half of the excess of pre-book income over other alternative minimum taxable income is a preference for taxable years beginning before 1990. For taxable years beginning after 1989, three-fourths of the excess of adjusted currrent earnings over other alternative minimum taxable income is a preference.

House bill

One hundred percent of the excess of pre-book income (for taxable years beginning before 1990) and one hundred percent of adjusted current earnings (for taxable years beginning after 1989) over other alternative minimum taxable income will be a preference for corporations. The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

E. FOREIGN TAX PROVISIONS

1. Treatment of South African income

Present law

Foreign tax credits are denied, and deferral of U.S. tax on income of controlled foreign corporations is denied, with respect to operations in countries (1) designated by the Secretary of State as

repeatedly providing support for acts of international terrorism; (2) with which the U.S. does not have diplomatic relations, or (3) the government of which the U.S. does not recognize (with certain exceptions).

House bill

The House bill denies foreign tax credits and deferral of U.S. tax on income of a controlled foreign corporation with respect to South African income attributable to the period from January 1, 1988 to the date on which the Secretary of State certifies to the Secretary of the Treasury that the South African Government has taken the steps that trigger termination of the measures in the Comprehensive Anti-Apartheid Act of 1986 to undermine apartheid. The provision is applicable to taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Imported property income

Present law

The United States generally defers tax on income earned by foreign subsidiaries of U.S. companies until the income comes to America, but currently taxes some types of their income (such as passive, shipping, financial, and oil-related income). Separate foreign tax credit limitations prevent cross-crediting, i.e., the use of foreign tax credits imposed on one stream of income to reduce U.S. tax on an unrelated stream of income.

House bill

The House bill places imported property income in a separate foreign tax credit limitation and currently taxes imported property income of U.S.-controlled foreign corporations. It defines imported property income to include income from goods, services, or intangibles destined for U.S. use or consumption. It generally excludes (1) income from property that is exported from the United States, (2) income from financial instruments, and (3) oil income.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

F. INSURANCE PROVISIONS

1. Interest rate used in computing tax reserves for life insurance companies

Present law

Present law provides that, for purposes of determining life insurance company taxable income, life insurance reserves for any contract are the greater of the net surrender value of the contract or the reserves determined under Federally prescribed rules. In no event will the amount of the Federally prescribed tax reserves exceed the amount of the statutory (annual statement) reserves.

In calculating Federally prescribed reserves for any type of contract, present law requires the application of prevailing commissioners' standard mortality and morbidity tables, and also requires the application of an interest rate (discount factor) to take account of the time value of money.

Under present law, the interest rate in computing Federally prescribed reserves is generally the prevailing State assumed rate (generally, the highest assumed interest rate permitted to be used in at least 26 States in computing life insurance reserves for insurance or annuity contracts of that type as of the beginning of the calendar year in which the contract is issued).

By contrast, the interest rate assumption under the present-law rules applicable in calculating tax reserves of property and casualty insurance companies is determined in accordance with the applicable Federal rate.

House bill

Under the House bill, the interest rate to be applied in determining the amount of the life insurance reserves for any contract is the greater of the applicable Federal interest rate or the prevailing State assumed interest rate.

For purposes of the provision, the applicable Federal interest rate is the rate determined under the discounting rules for property and casualty reserves for the calendar year in which the contract is issued.

The prevailing State assumed rate has the same meaning as under present law, except that the election of a rate for nonannuity contracts, and the special rule for determining a rate for certain accident and health contracts if there is no prevailing State assumed rate, are repealed under the provision.

In the case of reserves for contracts that do not involve life, accident, or health contingencies (sec. 807(c)(3)), the interest rate to be applied is the greatest of: (1) the applicable Federal interest rate, (2) the prevailing State assumed interest rate, or (3) the rate assumed by the company in determining the guaranteed benefit.

A conforming change is made for purposes of calculating policy interest (sec. 812(b)(2)(A)).

The provision is effective for contracts issued in taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with a modification permitting companies a one-time election (revocable only with the consent of the Secretary of the Treasury) to apply an updated applicable Federal interest rate every 5 years in calculating life insurance reserves. The election is provided to take account of the fluctuations in market rates of return that companies experience with respect to life insurance contracts of long duration.

In general, under the provision, the interest rate to be applied in determining the amount of the life insurance reserves for any contract is the greater of the applicable Federal interest rate or the prevailing State assumed rate for the calendar year in which contract is issued. Under the election, this rate continues to be applied in the 4 succeeding years after the year the contract is issued. For the 5th through 9th year after the contract is issued, the rate to be applied in determining reserves for such years (but not for any prior years) with respect to the contract is the greater of the applicable Federal interest rate for such 5th year, or the prevailing State assumed rate for the calendar year in which the contract was issued. Thus, the rate for determining life insurance reserves with respect to any contract cannot be lower than the prevailing State assumed rate for the calendar year in which the contract was issued.

For example, in the case of a company making an election under the provision, the company's life insurance reserves for any contract are determined (for the 5th through 9th years after the original contract year) using the applicable Federal interest rate for such 5th year if such rate is greater than the prevailing State assumed rate for the year in which the contract was issued. If the applicable Federal interest rate for such 5th year is lower than the rate used for the preceding 5 years, the company's deduction for additions to reserves for the 5th through 9th years after the original contract year may be greater than it would have been if the company had not made the election to use the updated rate. Similarly, if the rate for such 5th year is higher than the rate used for the preceding 5 years, the company's deduction for additions to reserves for the 5th through 9th years after the original contract year may be smaller than it would have been absent the election, or there may be a reduction in reserves resulting in an inclusion in income for such years.

The use of the updated applicable Federal interest rate under the election does not cause the recalculation of life insurance reserves for any prior year. Thus, for example, if an updated rate is applied to calculate life insurance reserves in the tenth year following the year in which the contract was issued, the amount of the company's life insurance reserves, and its deduction for additions to reserves, for the preceding 10 years are not affected.

Section 807(f), which generally provides a 10-year spread for any change in computing reserves, does not apply to the use of an updated applicable Federal interest rate under the election. Instead, the difference between the opening reserve computed under the old interest rate and the opening reserve computed under the new in-

terest rate is to be taken into account entirely for the year in which the new interest rate applies.

Under the election, no change is made to the interest rate used in determining life insurance reserves if the updated applicable Federal interest rate is less than one-half of one percentage point different from the rate utilized by the company in calculating life insurance reserves during the preceding 5 years. Thus, for example, if the applicable Federal interest rate is 7.5 percent, and the rate utilized by an electing company during the preceding 5 years is 7.6 percent, the company continues to use the 7.6 percent rate during the second 5-year period with respect to reserves for that contract year. This rule parallels the calculation of State assumed rates under the Standard Valuation Law, under which a change of less than one-half of one percentage point does not give rise to a change in the State assumed rate.

The election applies to all contracts issued during the calendar year for which the election is made and any subsequent calendar year unless the election is revoked with the consent of the Secretary of the Treasury.

The provision applies to contracts issued in taxable years beginning after December 31, 1987. The election applies to life insurance reserves with respect to contracts issued in taxable years beginning after December 31, 1987.

2. Treatment of foreign insurance companies

Present law

Under present law, a foreign corporation that is carrying on an insurance business in the United States is generally taxed in the same manner as a U.S. insurance company on its income that is effectively connected with its conduct of a U.S. trade or business.

Income from sources within the United States derived by a foreign corporation carrying on an insurance business in the United States is generally treated as effectively connected with the conduct of its insurance business in the United States. In addition, in the case of a foreign life insurance company, income from sources outside the United States that is attributable to its U.S. business is treated as effectively connected with the conduct of an insurance business in the United States. Foreign property and casualty insurance companies are not subject to this rule.

Under present law, if the surplus of a foreign life insurance company held in the United States is less than a statutorily defined required surplus, then the income that is effectively connected with the conduct of the U.S. insurance business is increased by an imputed amount. This imputed amount is determined by multiplying (1) the excess of the required surplus over the actual surplus by (2) the current investment yield on the U.S. assets of the foreign life insurance company.

House bill

The House bill extends to foreign property and casualty insurance companies the present-law provision for determining whether foreign source income of a foreign life insurance company is effectively connected with the conduct of a U.S. trade or business.

Under this provision, income from sources without the United States that is attributable to a U.S. property and casualty insurance business is treated as effectively connected with the conduct of that trade or business.

The House bill also revises the rules relating to the required surplus of foreign life insurance companies and extends these revised rules to foreign property and casualty insurance companies. Under the House bill, the net investment income of a foreign insurance company that is effectively connected with the conduct of an insurance business in the United States may not be less than the required U.S. assets of the company multiplied by the domestic investment yield applicable to the company for the taxable year.

The required U.S. assets of a foreign insurance company for any year are determined by multiplying the company's total insurance liabilities on U.S. business by the domestic asset/liability percentage applicable to the company. The Secretary is to prescribe for each year a domestic asset/liability percentage for foreign life insurance companies and a separate domestic asset/liability percentage for foreign property and casualty insurance companies. The domestic asset/liability percentage for each type of insurance company equals a fraction, the numerator of which is the assets of the domestic companies of such type and the denominator of which is the total insurance liabilities of the domestic companies of such type.

The Secretary is also required to prescribe a domestic investment yield for foreign life insurance companies and a separate domestic investment yield for foreign property and casualty insurance companies. The investment yield for each type of insurance company equals a fraction, the numerator of which is the net investment income of domestic insurance companies of such type and the denominator of which is the mean of the aggregate assets of the domestic companies of such type.

A foreign insurance company may elect for purposes of the minimum effectively connected net investment income requirement to use its worldwide current investment yield in lieu of the applicable domestic investment yield. The worldwide current investment yield equals a fraction, the numerator of which is the net investment income of the company from all sources and the denominator of which is the mean of the worldwide assets of the company that are held for the production of investment income.

The Secretary is to determine the domestic asset/liability percentage and the domestic investment yield for each type of insurance company on the basis of data derived from a representative sample of domestic insurance companies. For any taxable year, the domestic asset/liability percentage and the domestic investment yield are to be based on data for the second preceding taxable year.

Finally, the House bill clarifies that any person carrying on an insurance business in the United States, whether operating as a partnership, corporation, syndicate, or other entity, is taxable as a U.S. insurance company if such person would qualify as an insurance company for U.S. tax purposes.

The provisions of the House bill relating to the treatment of foreign insurance companies apply for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with several modifications. The conference agreement provides a definition of net investment income for purposes of the minimum effectively connected net investment income requirement. This definition of net investment income applies in determining the actual effectively connected net investment income of a foreign insurance company for any taxable year (i.e., the amount reflected on the U.S. books of the foreign corporation for tax purposes) and also in determining the domestic investment yield and the worldwide current investment yield.

Under the conference agreement, net investment income is defined as gross investment income less the expenses allocable to such income. Gross investment income for this purpose includes interest (including tax-exempt interest), rents, royalties, the total amount of dividends received (i.e., not reduced by the dividends received deduction), and the net gain (or loss) derived from the sale of investment assets. The expenses taken into account for this purpose include not only interest (including interest that is incurred or continued to purchase or carry tax-exempt obligations), taxes (other than Federal income taxes), salaries and other similar items, but also depreciation and depletion, to the extent allocable to gross investment income.

Under the conference agreement, the required U.S. assets of a foreign insurance company for any taxable year are determined by multiplying the mean of the company's total insurance liabilities on U.S. business by the domestic asset/liability percentage applicable to the company. Similarly, the domestic asset/liability percentage for each type of insurance company is determined on the basis of the mean assets and the mean insurance liabilities of domestic companies of such type.

The conference agreement provides regulatory authority to address the treatment of segregated asset accounts. The conferees anticipate that a separate asset/liability percentage will be prescribed for segregated asset accounts similar to the present-law treatment of such accounts. In addition, the Secretary may prescribe the use of an investment yield for segregated asset accounts that is based on the actual earnings of the assets underlying the accounts.

The conference agreement also authorizes regulations that provide appropriate adjustments to the minimum effectively connected net investment income of a foreign insurance company to account for the fact that the domestic investment yield for any year is based on data from the second preceding year. The conferees anticipate that if the actual effectively connected net investment income of a foreign insurance company for any year exceeds the minimum effectively connected net investment income of such insurance company, then such excess is to reduce the amount of net investment income that would otherwise be imputed to the company under this provision for a later taxable year.

The conference agreement further provides regulatory authority to address the treatment of foreign insurance company investments in U.S. subsidiaries.

Under the conference agreement, foreign source income that is attributable to a U.S. trade or business of a foreign property and casualty insurance company is treated as effectively connected with that trade or business. The conferees understand that present regulations under Code section 864, which apply only to life insurance companies, generally look to assets indicated on State insurance reports in determining whether income is attributable to a U.S. trade or business. The conferees believe that those regulations should be reexamined to consider the appropriateness of relying on State insurance rules in determining effectively connected income. The parallel regulations that will be promulgated to cover property and casualty insurance companies should take into account any changes to the existing regulations (covering life insurance companies) that address this concern.

The conferees intend that any new regulations under section 864 should be coordinated with regulations that will be promulgated under the agreement's provision requiring a minimum level of effectively ccnnected investment income (the provision amending sec. 842) so as not to tax the same income twice. Consistent with present law, foreign source income that otherwise would be made effectively connected under the agreement's changes to section 864 will not be treated as effectively connected if it is derived by a controlled foreign corporation and is subpart F income.

If this provision of the conference agreement is found to be in conflict with any existing U.S. income tax treaty, the conferees do not intend to apply the general principle that, in the case of a conflict, a later enacted statute prevails over earlier enacted statutes or treaties. The conferees understand, however, that the Treasury Department believes that the provision does not violate any treaty now in effect. In particular, the Treasury Department believes that the provision does not violate treaty requirements that foreign corporations be taxed only on profits derived from the assets or activities of a corporation's U.S. permanent establishment, that permanent establishments of foreign corporations be taxed only on profits the permanent establishments might be expected to make were they separate enterprises dealing independently with the foreign corporations of which they are a part, or that permanent establishments of foreign corporations be taxed in a manner no more burdensome than the manner in which domestic corporations in the same circumstances are taxed. The conferees similarly believe that this provision does not violate any treaty now in effect.

Several factors are cited by the Treasury Department in support of this view. First, the provision applies to life insurance companies and property and casualty insurance companies in a manner substantially similar to present-law rules covering only life insurance companies. The Treasury Department does not consider those present-law rules to violate U.S. treaties.

Second, the provision attributes to a foreign insurance company an amount of assets determined by reference to the assets of comparable domestic insurance companies, thus reasonably measuring the amount of assets that the U.S. trade or business of a foreign

insurance company would be expected to have were it a separate company dealing independently with non-U.S. offices of the foreign insurance company. In addition, a foreign insurance company can elect to determine its investment income based on the company's worldwide investment yield, or utilize the statutory formula based on domestic industry averages. It is well established that use of a formula as an element in determining taxable income does not necessarily violate "separate entity" accounting. The Internal Revenue Code contains a number of provisions that apply fungibility principles to financial assets; use of fungibility principles in these ways is not inconsistent with the arm's-length standard and does not violate U.S. income tax treaties. Similarly, the agreement's provision, which takes into account both the taxpayer's actual investment yield and arm's-length measures of yield and U.S.-connected assets, is appropriate under income tax treaties.

Third, the provision furnishes regulatory authority for the Secretary to provide a relief mechanism, as described above, to mitigate the effects of any increase in tax resulting from the fact that a taxpayer's deemed income from U.S.-connected investments exceeds its actual income from those assets.

The conferees understand that the provision governing foreign insurance companies solves a statutory problem in the context of the broader issue: measuring the U.S. taxable income of a foreign corporation that is effectively connected with its U.S. trade or business. That issue more generally involves the determination of which of the corporation's assets generate gross effectively connected income, and which of its expenses and liabilities are connected with such income. Certain types of assets and liabilities that must, in this process, be attributed in whole or in part to a U.S. trade or business may be particularly suitable for movement among the various trades or businesses of a single foreign corporation, may be fungible with assets and liabilities identified with other trades or businesses of the corporation, or may be usable by more than one such trade or business simultaneously. Financial assets and liabilities tend to fall into these categories.

In some cases, provisions of the Code, such as those governing the amount of U.S.-effectively connected income of a foreign insurance company, are designed to ensure that assets and liabilities that are difficult to assign unambiguously to a single tax jurisdiction are taken into account by the U.S. tax system in a way that reflects economic reality. In other cases, the appropriate resolution is left to regulations. For example, the Code gives the Treasury very broad authority to promulgate regulations to ensure an appropriate allocation and apportionment of expenses, including interest expenses (in effect, to ensure an appropriate allocation of liabilities), to the U.S. trade or business of a foreign corporation (e.g., Code secs. 861(b) and 882(c)(1)(A); Reg. secs. 1.861-8 and 1.882-5). Whether such rules are provided in the Code itself or pursuant to regulatory authority, the consistency of such rules with the treaty obligations of the United States must be determined in the same manner. If a treaty does not provide specific rules for the allocation of expenses, it is consistent with the treaty to make such allocation under the generally applicable principles and provisions of U.S. law. See Rev. Rul. 85-7, 1985-1 C.B. 188. Thus, consistent with the

analysis described above, the conferees believe that the current regulatory provisions for determining liabilities allocable to a foreign corporation's U.S. business are fully consistent with the treaty obligations of the United States.

The determination of U.S.-effectively connected income of foreign insurance companies is presently addressed primarily by specific statutory provisions, and the conferees believe that the correction of shortcomings in those rules is appropriately accomplished by amending these provisions. The conferees are aware that analogous rules affecting deductions, namely, rules for the attribution of the financial liabilities of a foreign corporation to the corporation's U.S. trade or business, may also be in need of revision to ensure that such corporations pay sufficient U.S. tax. The conferees believe, however, that this continues to be an issue appropriately addressed by regulations, and that any adjustment of the rules in this area can be accomplished by amending the regulations. The conferees anticipate that the Treasury Department will take steps to amend those regulations insofar as their current practical effect is to permit foreign corporations to allocate excessive amounts of debt and excessive amounts of interest expense toward reducing their U.S.-effectively connected income.

3. Treatment of mutual life insurance company policyholder dividends for purposes of the alternative minimum tax book preference

Present law

Under the present-law provisions for the corporate alternative minimum tax, 50 percent of the excess of the adjusted net book income of a taxpayer over the alternative minimum taxable income of the taxpayer (without regard to book income) is treated as a preference item (the "book income" preference). In general, the book income used in computing the adjusted net book income of a corporate taxpayer is the net income or loss set forth on the taxpayer's applicable financial statement. The applicable financial statement is the statement provided for regulatory or credit purposes, for the purpose of reporting to shareholders or other owners, or for other substantial nontax purposes. Generally, financial statements have the following priority: financial statements required to be filed with the Securities and Exchange Commission; certified audited financial statements; other regulatory statements; and other financial statements used for a substantial nontax purpose. Mutual life insurance companies that are not required to file financial statements with the Securities and Exchange Commission generally determine adjusted net book income on the basis of regulatory statements that are based on statutory accounting principles.

House bill

Under the House bill, in calculating book income for purposes of the book income preference of the corporate alternative minimum tax, mutual life insurance companies may not reduce book income for policyholder dividends paid or accrued during the taxable year by more than the amount allowable in computing life insurance company taxable income under section 801(b) of the Code. Thus,

the adjusted net book income will not be reduced by the nondeductible portion of policyholder dividends.

The House bill also provides authority to the Secretary of the Treasury to provide for such adjustments as may be necessary to make the calculation of adjusted net book income in the case of a mutual life insurance company consistent with the calculation of adjusted net book income generally. It is intended that the Secretary will prescribe these rules in a manner that makes the treatment of stock and mutual life insurance companies consistent. For example, it may be appropriate to require mutual life insurance companies to capitalize and amortize acquisition expenses in a manner similar to that provided for purposes of determining adjusted current earnings (sec. 56(g)(4)(F)).

The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with modifications. Under the conference agreement, in determining the adjusted net book income of any mutual life insurance company, a reduction is allowed for policyholder dividends for any taxable year only to the extent such dividends exceed the differential earnings amount determined for such taxable year. Thus, the reduction of adjusted net book income of a mutual insurance company for policyholder dividends does not include the amount that is not deductible by virtue of section 809 (including the recomputation amount determined under sec. 809(f)) in determining the company's life insurance company taxable income under section 801(b).

The conference agreement also provides that the Treasury regulatory authority to make additional adjustments to the calculation of adjusted net book income in the case of mutual life insurance companies applies to any life insurance company. The regulatory authority is intended to be exercised to make the book income of mutual life insurance companies and stock life insurance companies that file financial statements reflecting a method of accounting other than generally accepted accounting principles ("GAAP") more consistent with the book income of life insurance companies that file GAAP statements.

The conferees intend that the adoption of this provision is not to create any inference with respect to the ongoing Treasury study on segment balance which was mandated by the 1984 Act.

4. Treatment of certain insurance syndicates

Present law

Pursuant to a closing agreement entered into during 1980 between the Internal Revenue Service and the member underwriters of various insurance and reinsurance syndicates of the United Kingdom, the members of the syndicates are subject to tax as individuals and premiums received in any taxable year are not taken

into account by the members until the third taxable year after the year of receipt.

House bill

The House bill terminates the closing agreement entered into between the Internal Revenue Service and the members of the syndicates. Any such syndicate that is engaged in a U.S. business is to be taxed as a domestic insurance company for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment, but requires the Treasury Department to conduct a study of the proper Federal income tax treatment of the income derived by members of insurance and reinsurance syndicates.

Since the 1980 closing agreement was entered into, Congress has made substantial changes to the rules governing the taxation of insurance income and the sourcing of income. For instance, the 1984 Act substantially revised the tax treatment of life insurance companies. The 1986 Act required discounting of loss reserves and changed the treatment of unearned premiums of property and casualty insurance companies. The 1986 Act also substantially modified the rules governing the source of income, particularly those rules governing transportation activities and ocean activities. The Subchapter S Revision Act of 1982 codified the rule that an insurance company is not permitted to operate as an S corporation, which means that two levels of tax generally are imposed on U.S. individuals that earn insurance income.

The conferees intend the study to take into account the foregoing and other changes in the law, and that the Treasury Department explore whether the agreement, which imposes only one level of tax, creates a disparity between U.S. underwriters who are members of syndicates formed in the United States and U.S. underwriters who are members of syndicates formed in the United Kingdom.

The results of the study are to be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate before April 1, 1988. The Treasury Department is also required to renegotiate the closing agreement before January 1, 1990, to implement the conclusions reached in the study.

G. TREATMENT OF NET INVESTMENT INCOME OF TRADE ASSOCIATIONS

Present law

In general, present law imposes a tax (the UBIT) on the unrelated business taxable income of otherwise tax-exempt organizations, including trade associations, chambers of commerce, and other organizations described in section 501(c)(6). Under special rules, the UBIT generally does not apply to certain investment income, such as dividends, interest, royalties, rental income, and income on certain dispositions of property (sec. 512(b)). However, in the case of

tax-exempt social clubs, voluntary employees' beneficiary associations (VEBAs), and certain other mutual benefit associations, the UBIT generally applies under present law to all income—including investment income—other than "exempt function income," such as membership receipts (sec. 512(a)(3)).

House bill

In the case of section 501(c)(6) organizations ("trade associations"), dividends, interest, royalties, rental income, other items of income described in sections 512(b) (1), (2), or (3), and gain (or loss) on certain dispositions of property described in section 512(b)(5) are treated as derived from an unrelated trade or business, and deductions directly connected with earning such income are allowed in computing unrelated business taxable income. However, the UBIT will not apply to any such income that is set aside to be used exclusively for charitable purposes, or to certain "rollover" gain on disposition of property used directly in performing the association's exempt functions.

The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

III. Estimated Tax Provisions

1. Corporate estimated tax reform

Present law

Under present law, a corporation that fails to pay an installment of estimated income tax on or before the due date generally is subject to a penalty computed at the rate of interest for tax underpayments. The penalty may not be waived.

The penalty is computed by applying the underpayment interest rate to the amount of the underpayment of the installment for the period of the underpayment. The amount of the underpayment is the difference between the payments made on or before the due date of each installment and 90 percent of the total tax shown on the return for the year, divided by the number of installments that should have been made. The penalty on underpayments of estimated tax that are between 80 percent and 90 percent of the actual tax due is imposed at three-quarters of the full rate.

There are generally three exceptions to the penalty. No penalty is imposed if the installment is based on the lesser of (1) the preceding year's tax liability, if a return showing a liability for tax was filed for the preceding year; (2) the tax computed by using the facts shown on the prior year's return under the current year's tax rates; or (3) 90 percent of the taxes which would be due if certain income already recognized during the current year was annualized. Large corporations may not use exceptions (1) and (2) described above. A large corporation is defined as a corporation having at

least $1 million of taxable income in any of the three prior taxable years. Under present law, no penalty is imposed if the estimated tax required to be paid is less than $40.

House bill

The House bill consolidates all the corporate estimated tax rules into one section of the Code, similar to the estimated tax provision enacted in 1984 for individuals. Also, several modifications are made to present law.

Under the bill, the underpayment penalty with respect to any installment applies to the difference between payments made by the due date of the installment and the lesser of an installment based on (1) 90 percent of the tax shown on the return, or (2) 100 percent of the tax shown on the preceding year's return. As under present law, exception (2) generally is not available to a large corporation, except that a large corporation could use that exception for purposes of making its first estimated payment for any taxable year. Thus, both large and small corporations may base their first estimated tax payment of any taxable year on 100 percent of the tax shown on the preceding year's return. In determining whether a corporation is a large corporation because its taxable income exceeds $1 million, net operating loss and capital loss carryforwards and carrybacks are disregarded. The safe harbor of the previous year's facts and the current year's rates is eliminated under the bill.

In addition, the full rate of the penalty is imposed with respect to any payment only to the extent the total payments for the year up to the required installment are below 90 percent of the taxes which would be due if the income already received during the current year was placed on an annual basis. Thus, the "cliff" effect of the penalty under present law is eliminated under the bill. Additionally, the reduced rate of the penalty for underpayments that are between 80 and 90 percent is eliminated. Any reduction in a payment resulting from using the annualization exception must be made up in the subsequent payment if the corporation does not use the annualization exception for that subsequent payment.

Finally, no penalty is imposed if the tax shown on the return for any taxable year is less than $500.

This provision applies to taxable years beginning after December 31, 1987.

Senate amendment

The Senate amendment is the same as the House bill, except that the Senate amendment also provides a special transition rule for 1988. For taxable years beginning in 1988 only, both large and small corporations may base their first and second estimated tax payments for that taxable year on 100 percent of the tax shown on the preceding year's return.

Conference agreement

The conference agreement follows the House bill, except that there is a modification to the provision providing that any reduction in a payment resulting from using the annualization exception must be made up in the subsequent payment if the corporation

does not use the annualization exception for that subsequent payment. The modification is that the amount required to be made up in the subsequent payment is 90 percent of the amount otherwise required to be made up.

2. Revised withholding certificates required to be put into effect more promptly

Present law

If an employee furnishes to his or her employer a withholding allowance certificate (Form W-4 or W-4A) that replaces an existing certificate, the employer must make the certificate effective no later than the first status determination date that is at least 30 days after the date the employee furnishes the certificate to the employer. The status determination dates are January 1, May 1, July 1, and October 1 of each year.

Employers may elect to make replacement certificates effective earlier than they are required to statutorily; most employers elect to do so.

House bill

The House bill requires employers to give effect to replacement withholding allowance certificates (Form W-4 or W-4A) no later than the start of the first payroll period ending on or after the thirtieth day after the day on which the employee furnishes the certificate to the employer. Employers are permitted to continue to elect to give effect to replacement withholding allowance certificates on any date between the date it is furnished by the employee and the statutorily mandated effective date.

The provision applies to replacement withholding allowance certificates furnished after the day 30 days after the date of enactment of the bill.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

3. Estimated tax penalties for 1987

A. DELAY OF INCREASE IN CURRENT YEAR LIABILITY TEST FOR INDIVIDUALS

Present law

Individuals owing income tax who do not make estimated tax payments are generally subject to a penalty (Code sec. 6654). In order to avoid the penalty, individuals must generally make quarterly estimated tax payments that equal at least the lesser of 100 percent of the prior year's tax liability or 90 percent of the current year's tax liability. Amounts withheld from wages are considered to be estimated tax payments.

The Tax Reform Act of 1986 increased from 80 to 90 percent the proportion of the current year's tax liability that taxpayers must pay to avoid the penalty. This was effective for taxable years beginning after December 31, 1986.

House bill

The House bill delays for one year this increase from 80 to 90 percent. Thus, for taxable years beginning before January 1, 1988, individuals may avoid the estimated tax penalty by making quarterly estimated tax payments that equal at least the lesser of 100 percent of the prior year's tax liability or 80 percent of current year's tax liability. For taxable years beginning after December 31, 1987, individuals may avoid the estimated tax penalty by making quarterly estimated tax payments that equal at least the lesser of 100 percent of the prior year's tax liability or 90 percent of the current year's tax liability.

The increase from 80 to 90 percent is effective for taxable years beginning after December 31, 1987 (instead of taxable years beginning after December 31, 1986).

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. CORPORATIONS MAY USE 1986 TAX TO DETERMINE CERTAIN ESTIMATED TAX INSTALLMENTS DUE BEFORE JULY 1, 1987

Present law

Under present law, a corporation that fails to pay an installment of estimated income tax on or before the due date generally is subject to a penalty computed at the rate of interest for tax underpayments. The penalty may not be waived.

The penalty is computed by applying the underpayment interest rate to the amount of the underpayment of the installment for the period of the underpayment. The amount of the underpayment is the difference between the payments made on or before the due date of each installment and 90 percent of the total tax shown on the return for the year, divided by the number of installments that should have been made.

No estimated tax penalty is imposed if the installment is based on the lesser of (1) the preceding year's tax liability, if a return showing a liability for tax was filed for the preceding year; (2) the tax computed by using the facts shown on the prior year's return under the current year's tax rates; or (3) 90 percent of the taxes which would be due if certain income already recognized during the current year were placed on annual basis. Large corporations may not use exceptions (1) and (2) described above. A large corporation is defined as a corporation having at least $1 million of taxable income in any of the three prior taxable years.

Present law does not give explicit authority to the Treasury to provide alternative estimated tax rules for corporations.

The Treasury has issued regulations, applicable to estimated tax payments due before July 1, 1987, that permit corporations to base those estimated payments on 120 percent of 1986 taxable income with certain modifications.

House bill

The House bill provides two safe harbors for corporate estimated tax payments due before July 1, 1987. First, all corporations, including large corporations, are permitted to base those estimated tax payments on 100 percent of the 1986 tax liability. Second, statutory authorization is provided for the safe harbor provided in the Treasury regulations.

Under the first safe harbor, no penalty for the underpayment of estimated tax for a taxable year beginning in 1987 will be imposed on a large corporation (as defined in sec. 6655(i)(2) of the Code) for any payment due on or before June 15, 1987, if the corporation's estimated tax payments meet the present law requirements (of sec. 6655(d)(1)) applicable to other corporations allowing payments to be based on the tax shown on the prior year's return. Thus, large corporations are expressly authorized to utilize the estimated tax safe harbor of paying the preceding year's tax liability for estimated tax installments for the taxable year beginning in 1987 that are also due on or before June 15, 1987. A corporation may take advantage of this rule only to the extent that the underpayment of estimated tax is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987. This relief is available for the first two payments of a calendar year corporation and for the first payment of a fiscal year corporation whose taxable year begins on or before March 1, 1987.

The provisions are effective for corporate estimated tax installments for 1987 that were due before July 1, 1987.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

IV ESTATE AND GIFT TAXES

1. Extension of 1987 tax rates

Present law

Under the estate and gift taxes, a single rate schedule is applied to an individual's cumulative gifts and bequests. The generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate.

For 1987, the estate and gift tax rates are 55 percent on taxable transfers over $3 million. For transfers occurring after 1987, the maximum estate and gift tax rate is scheduled to decline to 50 percent for taxable transfers over $2.5 million.

House bill

The House bill makes permanent the estate and gift rates applicable in 1987.

Senate amendment

The Senate amendment defers the scheduled decline in estate and gift tax rates for two years (through 1989).

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with the modification that the scheduled decline is deferred for five years. Thus, the maximum rate declines to 50 percent for decedents dying, and gifts made, after December 31, 1992.

2. Graduated rates and unified credit

Present law

The estate and gift taxes are unified, so that a single graduated rate schedule is applied to an individual's cumulative gifts and bequests. A unified credit of $192,800 is deducted from the gross gift or estate tax in arriving at the net tax payable. The $192,800 credit in effect exempts the first $600,000 of transfers from gift and estate taxation.

House bill

The House bill phases out the benefit of the unified credit and graduated rates for transfers exceeding $5 million. The gift and estate tax liability for taxable transfers in excess of $5 million is increased by five percent of such excess until the benefit of the unified credit and graduated brackets is recaptured.

Senate amendment

No provision.

Conference agreement

The benefit of the unified credit and graduated rates is phased out for transfers exceeding $10 million. The gift and estate tax liability for taxable transfers in excess of $10 million is increased by five percent of such excess until the benefit of the unified credit and graduated brackets is recaptured.

The rate adjustment for decedent dying, and gifts made, after December 31, 1987, and before December 31, 1992, occurs for cumulative taxable transfers between $10,000,000 and $21,040,000. Once the maximum adjustment applies, the 55 percent rate becomes the rate of taxation. The rate adjustment for decedents dying, and gifts made, after December 31, 1992, occurs for cumulative transfers between $10,000,000 and $18,340,000, after which the rate of taxation becomes 50 percent.

This provision does not otherwise affect the structure of the unified credit. Thus, gifts made prior to December 31, 1987, are counted in determining the amount of the unified credit subject to the phase-out. Therefore, even though a person makes gifts valued at

$600,000 prior to December 31, 1987, he is subject to the full 5 percent rate adjustment on transfers after 1987.

Pre-effective date gifts are counted toward cumulative transfers for purposes of determining the rate adjustment for transfers made after the effective date, but the tax rate on pre-effective date gifts remains unchanged. Thus, if a person makes $9 million in gifts prior to the effective date and $4 million in transfers after that date, $3 million of transfers are subject to the adjustment. If a person makes $22 million in gifts prior to the effective date, no transfers after that date are subject to the rate adjustment.

This provision does not affect the maximum Federal estate tax rate for purposes of computing the generation-skipping transfer tax. That rate is 55 percent for generation-skipping transfers made before December 31, 1992, and 50 percent thereafter.

3. State death tax credit

Present law

A dollar-for-dollar credit is allowed against the Federal estate tax for any estate, inheritance, legacy, or succession taxes paid to a State with respect to any property included in the gross estate.

House bill

The House bill repeals the credit for State death taxes and enacts an estate tax deduction for such taxes.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

4. Special valuation rules: minority discounts and estate freezes

Present law

Minority discounts

Numerous courts have found that blocks of corporate stock constituting a minority interest are usually worth less than a proportionate share of the value of the corporate assets. No special burden of proof must be met for a court to make such a finding. Courts have allowed a minority discount even where related persons together own a majority interest in the corporation.

Valuation freezes

Where an individual retains enjoyment of, or the right to income from, transferred property, his gross estate includes the full value of such property. Nonetheless, a decedent's estate does not include the full value of stock of a corporation previously owned by a decedent where the decedent gives his children common stock in the corporation but keeps control over, and the income from, the corporation through retention of preferred stock in that corporation.

House bill

Minority discounts

Under the House bill, the value of stock in a corporation is deemed to be equal to its pro rata share of all the stock of the same class in such corporation, unless a different value is established by clear and convincing evidence. In determining whether a different value can be established, all stock held, directly or indirectly, by an individual or by members of such individual's family is treated as held by one person. Similar rules apply in the valuation of interests in entities other than corporations and of property other than corporate stock.

Valuation freezes

Under the House bill, if a person holds a substantial interest in an enterprise and, in effect, transfers a disproportionate share of the potential appreciation in the enterprise, then the transferred property shall be included in his gross estate.

A person holds a substantial interest in an enterprise if such person owns, directly or indirectly, ten percent or more of the voting power in, or income of, the enterprise.

Transfers for full and adequate consideration to persons other than family members are exempted.

The estate freeze provision is effective for decedents dying after December 31, 1987.

Senate amendment

No provision.

Conference agreement

Minority discounts

The conference agreement follows the Senate amendment.

Estate freezes

The conference agreement follows the House bill, with the following modifications.

In general.—Under the conference agreement, if any person holds a substantial interest in an enterprise and in effect transfers after December 17, 1987, property having a disproportionately large share of the potential appreciation in such person's interest in the enterprise while retaining a disproportionately large share in the income of, or rights in, the enterprise, then the retention of the retained interest is treated as a retention of the enjoyment of the transferred property. The value of the transferred property is includible in a decedent's gross estate if the decedent retained the retained interest for his life, for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death. In addition, that value is includible if the retained interest is disposed of during the 3-year period ending on the date of the decedent's death.[1] For purposes of this provision, an

[1] It may be includable even if the retained interest is sold for its fair market value during the 3-year period. See *United States* v *Allen*, 293 F.2d 916 (10th Cir. 1961).

individual and such individual's spouse shall be treated as one person.

For example, if, after December 17, 1987, a person who holds all the preferred and common stock in a corporation transfers the common stock and retains the preferred stock until his death, the common stock is includible in his estate. Likewise, a similar transaction undertaken by transferring a partnership interest with greater rights to appreciation than the retained interest will result in the transferred interest being included in the estate.

If a share of appreciation borne by the transferred property is disproportionately large, but only with respect to part of the transferred property, only that part of the transferred property is included in the estate. Thus, if a person who owns a substantial interest in an enterprise and whose only holdings in the enterprise consist of 100 shares of common stock and 100 shares of preferred stock transfers 80 shares of the common stock and 20 shares of the preferred stock, only 60 shares of the transferred common stock are included in his estate under this provision.

The provision only makes certain property includible in the estate; it does not affect the valuation of such property for estate tax purposes.

Definitions

Substantial interest.—A person holds a substantial interest in an enterprise if such person owns, directly or indirectly, 10 percent or more of the voting power or income stream, or both, in the enterprise. For these purposes, an individual shall be treated as owning any interest in an enterprise owned, directly or indirectly, by any member of such individual's family. Interests held indirectly by a person include interests held by an entity in which such person has an interest.

Enterprise.—Under the conference agreement, an enterprise includes a business or other property which may produce income or gain.

Family.—Family means, with respect to any individual, such individual's spouse, any lineal descendant of such individual or of such individual's spouse, any parent or grandparent of such individual, and any spouse of any of the foregoing. Relationship by legal adoption is treated as one by blood.

Transfer.—A transfer encompasses, but is not limited to, all transactions whereby property is passed to or conferred upon another, regardless of the means or device employed in its accomplishment.

Disproportionately large share of potential appreciation.—A disproportionately large share of potential appreciation is any share of appreciation in the enterprise greater than the share of appreciation borne by the property retained by the transferor.

Rights.—Rights in the enterprise include voting rights, conversion rights, liquidation rights, warrants, options, and other rights of value.

Sales of interests

Sales for full and adequate consideration, other than those to family members, are exempted from the provision. Appropriate ad-

justments in the value of the estate will be made for sales which are not exempted. Thus, when an interest is sold for less than full and adequate consideration, the amount included in the estate will be reduced by the value of the consideration received by the decedent. Sales to family members will be deemed to be for less than full and adequate consideration for this purpose.

Effective date.—The provision is effective for decedents dying after December 31, 1987. However, it does not apply to transfers completed before December 18, 1987. Thus, for example, when a person who owns all the common and preferred stock in an enterprise transfers all the common stock after December 17, 1987, while retaining the preferred stock, the provision applies, even though the two classes of stock existed prior to December 18, 1987. If, in that situation, all the common stock is transferred prior to December 18, 1987, the provision does not apply to the transferor (or his spouse), even if either the common or preferred stock is transferred in subsequent transactions after December 17, 1987, so long as that transferor or his spouse does not reacquire any common stock.

5. Estate tax deduction for sales to an ESOP

Present law

The Tax Reform Act of 1986 (sec. 1172 of the Act and sec. 2057 of the Code) adopted a special provision allowing partial relief from estate taxes through an estate tax deduction for sales of employer securities to an employee stock ownership plan (ESOP) or an eligible worker-owned cooperative. This provision was adopted for a temporary period of time to encourage transfers of employer securities to ESOPs. The provision permits a deduction from the gross estate of a decedent equal to 50 percent of the proceeds received from a qualified sale of employer securities.

IRS Notice 87-13 (January 5, 1987) provided that the estate tax deduction for transfers to an ESOP or worker-owned cooperative is not available unless (1) the decedent directly owned the employer securities immediately before death, and (2) after the sale, the employer securities are allocated to plan participants or are held for future allocation in connection with an exempt loan under section 4975 or in connection with a transfer of assets from a defined benefit plan under the rules of section 4980(c)(3). Except in the case of a bona fide business transaction, employer securities are not treated as allocated or held for future allocation to the extent that such securities are allocated or held for future allocation in substitution of other employer securities that had been allocated or held for future allocation.

House bill

The bill confirms the positions taken in IRS Notice 87-13 and further clarifies and restricts the availability of the deduction. Thus, the bill (1) provides that the deduction is available in the case of sales of employer securities to tax-credit ESOPs, (2) limits the deduction to. sales of nonpublicly traded securities, (3) permits the sale of any assets listed as securities on the estate tax return, (4) limits the deduction to 50 percent of the taxable estate and the

maximum reduction in estate taxes to $750,000, (5) imposes holding period requirements for the decedent and the ESOP, (6) prohibits the deduction in the case of securities acquired with assets transferred from another plan of the employer, and (7) imposes certain excise taxes on an ESOP or worker-owned cooperative for a failure to satisfy the allocation and holding period requirements.

The confirmation of the IRS Notice is effective as if included in the Tax Reform Act of 1986. The other provisions are effective with respect to sales of securities to ESOPs after February 26, 1987, except that the ESOP holding period requirement generally applies to dispositions of securities by the ESOP after February 26, 1987. Securities subject to the ESOP holding period requirement are qualified employer securities, which for this purpose includes employer securities sold before February 27, 1987, for which a deduction was allowed.

Senate amendment

The Senate amendment is the same as the House bill, except that the provisions (other than the confirmation of the IRS Notice) are effective with respect to sales of securities to ESOPs after February 27, 1987, and that the ESOP holding period requirement generally applies to dispositions of securities by the ESOP after February 27, 1987. Securities subject to the ESOP holding period requirement are qualified employer securities, which for this purpose includes employer securities sold before February 27, 1987, for which a deduction was allowed.

Conference agreement

The conference agreement follows the House bill.

V. Excise Taxes; User Fees

A. EXCISE TAXES

1. Telephone excise tax: 3-year extension

Present law

A 3-percent excise tax is imposed on amounts paid for local telephone service, toll (long-distance) telephone service, and teletypewriter exchange service. This tax is scheduled to expire after December 31, 1987.

House bill

The House bill extends the present 3-percent telephone excise tax for 3 years, through December 31, 1990.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

2. Collection of diesel fuel and certain other motor fuels taxes on sales to retailers

Present law

The excise taxes on diesel fuel, special motor fuels, and nongasoline aviation fuel generally are imposed on the sale of the taxable fuel by a retail dealer to the ultimate consumer of the fuel (sec. 4041). Under an exception, retail dealers may elect to have wholesale distributors collect and pay the diesel fuel tax when the fuel is sold to the retailer.

House bill

The excise tax on taxable fuels, which are defined as diesel fuel, taxable special fuels, and nongasoline aviation fuels, is to be imposed on sale of the fuels to any taxable fuel retailer.

Taxable special fuels include special motor fuels (other than gasoline or diesel fuel) that are sold for use as a fuel in a motor vehicle or motorboat. Nongasoline aviation fuels means any liquid on which tax would be imposed if sold for use in an aircraft in noncommercial aviation.

Collection of the excise tax on the sale of any taxable fuel by wholesale dealers is made mandatory for all sales. The provisions of present law permitting tax-free sales for certain exempt purposes are repealed.

Any taxable fuel that is held on January 1, 1988, by a dealer for sale is subject to a floor stocks tax at the rate applicable under this section to that fuel.

The provision is effective on January 1, 1988.

Senate amendment

The Senate amendment generally is the same as the House bill, with the following differences.

The Treasury Department is authorized to prescribe regulations for purposes of making refunds or allowing credits of the non-gasoline fuels excise taxes. In addition, Treasury is authorized to require information reporting and registration from such persons in the distribution chain of these fuels as is deemed necessary to prevent evasion of the tax.

The Senate amendment also requires that amounts equivalent to revenues raised by the floor stocks taxes be transferred to the Highway Trust Fund or the Leaking Underground Storage Tank (LUST) Trust Fund.

The provision is effective on January 1, 1988.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment, but includes several modifications. First, the tax on special motor fuels continues to be imposed at the retail level. In the case of the taxes on diesel fuel and nongasoline aviation fuels, tax technically is imposed on the sale (or earlier use) of a taxable fuel by the producer thereof. The term producer is defined, however, to include wholesale distributors and other intermediate persons in the chain of distribution of the taxable fuel. All persons who are producers of a taxable fuel must register with the

Treasury Department and satisfy such bonding requirements as Treasury may prescribe. Therefore, a wholesale distributor may buy fuels without payment of tax only upon satisfaction of these requirements.

In general, like the House bill and Senate amendment, all provisions permitting exempt sales beyond the wholesale level are repealed. Treasury is, however, given discretionary authority to exempt from tax certain sales where the purchaser demonstrates to the satisfaction of Treasury that the fuel will be used in a nontaxable use and also registers and posts such bond as Treasury may require. This authority is to be exercised on a case-by-case basis. Sales that may be exempted include (1) diesel fuel sold for use as a fuel in a diesel-powered train, (2) aviation fuel sold for use as a fuel in an aircraft in commercial aviation, (3) taxable fuels sold for industrial use other than as a motor fuel, and (4) taxable fuel sold for exclusive use of any State, a political subdivision of a State, or the District of Columbia.[2] As under the House bill and the Senate amendment, sales of fuel that Treasury determines is destined for use as heating oil may be made without payment of tax. All other exemptions from these taxes must be realized through refund procedures following purchase of the fuels tax-paid.

The conference agreement grants Treasury broad authority to ensure compliance generally with the provisions of the agreement. Specifically, Treasury may, in its discretion, require information reporting by and registration of any person in the distribution chain of any taxable fuel (including, e.g., any distributor of fuel destined for use as heating oil).

These provisions of the conference agreement are effective on and after April 1, 1988, with a floor stocks tax being imposed as was provided under the House bill and the Senate amendment on all persons holding non-tax-paid fuels on April 1, 1988.

3. Extension of termination date for coal excise tax rate

Present law

A manufacturer's excise tax is imposed on the sale or use of domestically mined coal by the producer (sec. 4121). Effective April 1, 1986, the tax rate was increased (by 10 percent) to $1.10 per ton of coal from underground mines, and 55 cents per ton of coal from surface mines, but not to exceed 4.4 percent of the sales price.

Under present law, the tax rate is scheduled to revert to the pre-1982 rate of 50 cents per ton on underground coal and 25 cents per ton on surface coal (but not to exceed two percent of price) on the earlier of January 1, 1996 or the first January 1 as of which there is (1) no balance of repayable advances from the general fund to

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[2] States and local governmental units eligible to apply to the Treasury for approval to buy fuels without payment of tax generally include those governmental units that are permitted to buy tax-free under present law (sec. 4221(a)(4)). The conferees are aware that repeal of automatic tax-free sales of these fuels to States and local governments may, in certain cases, result in a temporary additional cost on certain of these entities, but determined that general concerns about compliance with these taxes outweigh that possibility. The discretionary exemption included in the agreement reconciles these compliance concerns with any potential burden on States and local governments. The conferees intend that in determining which governmental units may purchase taxable fuels without payment of tax under the agreement, the Treasury Department is to attempt to minimize any such costs to the extent consistent with the increased compliance objectives of the conference agreement.

the Black Lung Disability Trust Fund, and (2) no unpaid interest on such advances.

Amounts equal to the revenues collected from the coal excise tax are appropriated automatically to the Trust Fund. Present law also authorizes repayable advances from the general fund to the Trust Fund. The Trust Fund pays certain black lung disease benefits in cases where no coal mine operator is found specifically responsible for the individual miner's disease.

House bill

No provision.

Senate amendment

The Senate amendment extends the termination date for the present-law coal excise tax rate from January 1, 1996 to the earlier of (1) January 1, 2014 or (2) the date the Trust Fund achieves solvency (as defined under the present-law termination provision). The extension of the termination date for the present-law coal excise tax rate is effective from January 1, 1996 to January 1, 2014, subject to earlier termination under the solvency provision described above.

Conference agreement

The conference agreement follows the Senate amendment.

4. Highway excise tax exemptions for private buses

Present law

Receipts from excise taxes on motor fuels and tires are deposited in the Highway Trust Fund. Receipts of the Trust Fund are used to finance expenditures which are authorized from the Highway Trust Fund. Exemptions from these excise taxes are provided for several purchasers of fuels, including private operators of transit buses and certain private school buses and buses used by section 501(c)(3) organizations.

Private bus operators are exempt from the excise tax on tires. Intercity common carrier buses and qualified local buses are exempt from the 9-cents-per-gallon highway taxes on gasoline and special motor fuels. Qualified local buses are also exempt from the 15-cents-per gallon diesel fuel tax. In addition, private intercity buses receive a 12-cents-per-gallon refund (or credit) of the 15-cents-per-gallon highway diesel fuel tax. No exemption is available for buses engaged in transportation that is not scheduled and is not along regular routes, unless the seating capacity of the bus is at least 20 adults (not including the driver).

House bill

The House bill repeals the motor fuels and tires excise tax exemptions for buses, including buses used by sec. 501(c)(3) organizations. This repeal does not affect the exemptions of governmentally owned and operated mass transit buses or of public school buses.

This provision is effective on January 1, 1988.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

B. USER FEES

1. Internal Revenue Service fees

Present law

The Internal Revenue Service (IRS) currently provides written responses to questions of individuals, corporations, and organizations relating to their tax status or the effects of particular transactions for tax purposes. The IRS responds to these inquiries through the issuance of letter rulings, determination letters, and opinion letters. The IRS currently does not charge a fee for issuing letter rulings, determination letters, or opinion letters.

House bill

The House bill requires the IRS to charge a fee for each request for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The amount of the fee is to vary based on the type of request. In addition, the IRS is authorized to provide exemptions and reduced fees. The IRS may vary the amount of the fee or provide exemptions or reduced fees only if the average fee charged during a fiscal year for requests in any category is not less than the fee listed for that category.

The amount of the fee is payable in advance and is refundable only if the IRS refuses to respond to the request. The fee is not refundable if the person making the request withdraws the request prior to the issuance of the ruling, opinion, or determination.

The provision applies to requests filed on or after the first day of the second calendar month that begins after the date of enactment. The provision does not apply to requests filed after September 30, 1990.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, except that the average fee for each type of request is not to be less than the amount determined under following table:

Category	*Fee*
Employee plan ruling and opinion	$250
Exempt organization ruling	350
Employee plan determination	300
Exempt organization determination	275
Chief counsel ruling	200

2. Extension and increase in certain alcohol, tobacco, and firearms occupational taxes

Present law

Producers and manufacturers

Occupational taxes are imposed on the producers or manufacturers of firearms and alcohol products. Brewers currently pay $110 per year for each brewery operated by them, except any brewer of fewer than 500 barrels a year pays $55 per year. Manufacturers and importers of National Firearms Act (NFA) firearms pay a $500 per year occupational tax for each place of business, except a person who manufactures or imports only weapons classified as "any other weapons" pays, e.g., a tax of $25 per year.

No occupational taxes are imposed on distillers, wineries, or tobacco manufacturers.

Dealers

Dealers in NFA firearms generally are subject to an annual occupational tax of $200 per place of business. Dealers in only "any other weapons" are subject to an annual tax of $10 per place of business.

Wholesale liquor dealers pay an annual business occupational tax of $255 per place of business. Wholesale beer dealers pay $123 annually per place of business.

. Retail liquor dealers pay an annual occupational tax of $54 per place of business. For retail beer dealers, the tax is $24 per place of business. Limited retail dealers in distilled spirits are taxed at $4.50 per month, and the tax is $2.20 per month for limited retail dealers in beer and wine only.

Other occupations

Persons permitted to use distilled spirits without payment of tax, or who deal in or use specially denatured distilled spirits, must obtain permits under present law, but no occupational tax is imposed on these persons with respect to this activity.

Drawbacks (refunds) are permitted of the distilled spirits tax in certain cases. Persons receiving drawbacks of this tax for distilled spirits to be used for nonbeverage purposes are subject to an occupational tax based on the amount of alcohol used. The tax ranges from $25 per year for drawbacks that do not exceed 25 proof gallons to $100 per year for drawbacks exceeding 50 proof gallons.

House bill

Producers and manufacturers

Producers and manufacturers occupational taxes are increased to annual amounts of $1,000 per place of business for producers of all taxable alcoholic beverages (distilled spirits, wine, and beer), manufacturers of all taxable tobacco products, and for producers of firearms. A lower rate of $500 per year applies to businesses having gross receipts of less than $500,000 in the preceding taxable year. For purposes of this reduced rate, all members of a controlled

group of corporations (substituting 50 percent for the general 80 percent test of common ownership) are treated as one business.

Dealers

The firearms dealer occupational tax is increased to $500 per year per place of business.

Alcoholic beverage wholesale dealer occupational taxes are combined and imposed at an increased, uniform rate of $500 per year per place of business.

Retail dealers in alcoholic beverages pay an increased annual occupational tax at a uniform rate of $200 per year per place of business. Present law occupational taxes on limited retail dealers are repealed. The retail dealer occupational tax is extended to all persons required to acquire permits for tax-free use of distilled spirits. Occupational tax rates for persons receiving drawbacks of the distilled spirits tax for spirits used in nonbeverage products are combined and imposed at a rate of $500 per year per place of business.

Effective dates.—These provisions are effective on January 1, 1988.

Occupational taxes generally are imposed for a 12-month period, covering the period July 1 through June 30. Taxpayers are liable for payment for a full 12-month period of these new taxes on July 1, 1988. Taxpayers who paid the present law occupational taxes on July 1, 1987, are subject to an adjustment of tax for the period January 1 through June 30, 1988. The adjustment makes these taxpayers liable for 50 percent of the excess of the applicable new annual tax rate over the applicable present-law tax rate. Persons initially subject to an occupational tax as a result of the bill are liable for 50 percent of the applicable new annual occupational tax rate on January 1, 1988.

Senate amendment

The Senate amendment is the same as the House bill, except occupational taxes due on January 1, 1988, under the effective date provision, are payable on April 1, 1988.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, including the special due date for January 1, 1988, payments of occupational taxes contained in the Senate amendment.

VI. Other Revenue—Increase Provisions

A. Application of Targeted Jobs Tax Credit for Wages Paid During Period of Labor Dispute

Present law

A tax credit is available to employers of individuals from one or more of nine targeted groups. The nine groups consist of individuals who are recipients of payments under means-tested transfer programs, economically disadvantaged (as measured by family income), or disabled. The credit equals 40 percent of the first $6,000 of qualified first-year wages (85 percent of up to $3,000 of wages in

the case of disadvantaged summer youth employees). The employer's deduction for wages must be reduced by the amount of the credit.

There is no provision in present law specifically disallowing the targeted jobs credit to an employer when members of a targeted group, whose wages otherwise qualify for the credit, are hired to perform employment services in a labor dispute situation.

The credit is scheduled to expire as of December 31, 1988.

House bill

An employer is not entitled to the targeted jobs tax credit with respect to certain wages if the employer's plant or facility is involved in a strike or lockout. Specifically, the credit is not available for wages paid to a targeted-group individual who performs the same or substantially similar services as those of employees participating in or affected by the strikes or lockcut.

This provision applies with respect to amounts paid or incurred on or after January 1, 1987, for services rendered on or after such date.

Senate amendment

No provision.

Conference agreement

The Senate amendment follows the House bill.

B. ILLEGAL FEDERAL IRRIGATION SUBSIDIES

Present law

The Federal Government makes available water from reclamation and irrigation projects for agricultural purposes. Pursuant to the Reclamation Reform Act of 1982, this water must be provided at "full cost" in certain situations. In other situations, the amount charged for the water may be less than its full cost. If water is provided at less than full cost, the difference between the full cost amount and that actually charged for the water is not an item of income for Federal income tax purposes.

House bill

Gross income includes any illegal Federal irrigation subsidy received by a taxpayer during the taxable year. An illegal Federal irrigation subsidy is the excess (if any) of the amount required by law to be paid for any Federal irrigation water delivered to, or for the benefit of, the taxpayer over the amount paid for such water. Federal irrigation water is any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982. A taxpayer receiving an illegal water subsidy is required to include the amount of such subsidy in gross income in the taxable year in which such water is provided. No deduction is allowed with regard to any amount included in income as a result of this provision.

The provision is effective for water delivered to the taxpayer after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. The conferees intend that the amount considered paid for Federal irrigation water for the purposes of this provision includes all amounts paid for such water, whether or not paid in the same taxable year as the water is delivered.

C. COMPIANCE PROVISIONS

1. Escheat of refunds

Present law

Although under present law unclaimed Federal tax refunds remain in the General Fund of the Treasury, no provision of the Code expressly requires that such unclaimed refunds escheat (revert) to the Federal Government. Some States have sued the Federal Government, asserting that unclaimed Federal tax refunds escheat to the State. If the States win these cases, the Federal Government would be required to pay these amounts out of the General Fund of the Treasury to the States.

House bill

The House bill provides that unclaimed Federal tax refunds remain in the General Fund of the Treasury. This provision is effective upon the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. IRS funding for better compliance

Present law

During the 1986 filing season, the IRS processed 110 million Federal tax returns. Gross revenue receipts amounted to $782.3 billion, including $497 billion of individual and corporate income tax receipts.

Almost 55 million requests for assistance were handled under the IRS program of taxpayer assistance. Also, more than one million returns were examined by IRS personnel as part of its enforcement efforts.

House bill

The House bill includes a sense of the Congress Resolution stating that (1) Congress should increase outlays for the IRS for fiscal year 1989 by $0.7 billion and for fiscal year 1990 by $0.8 billion; (2) the IRS should offer improved taxpayer assistance and enforcement efforts by using these increases in areas recommended by the "Dorgan Task Force Report"; (3) the IRS should be one of the first

Federal agencies to utilize the new Gramm-Rudman option of a two-year budget cycle; and (4) increased funding should be provided for compilation and analysis of statistics of income and research.

Also, the IRS must issue a public report by April 15, 1989, on the extent of the tax gap and the measures that could be undertaken to decrease the tax gap. The IRS must also report annually on the improvements being made in the audit rate, taxpayer assistance, and enforcement efforts.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

D. TAX-EXEMPT BONDS

1. Tax-exempt bonds to acquire nongovernmental output property

Present law

States and local governments generally may issue tax-exempt bonds to finance the acquisition, construction, and operation of governmentally owned and operated output facilities. Such bonds are not subject to the State private activity bond volume limitations.

House bill

The House bill generally provides that bonds used to finance acquisition of nongovernmental output property by a State or a local governmental unit are private activity bonds and the interest thereon is taxable. Nongovernmental output property is defined as property that prior to its acquisition has been used (or held for use) by any person other than a State or a local governmental unit (e.g., by an investor-owned utility, a cooperative, or the Federal Government) in connection with an output facility. As under present law, output property includes, e.g., facilities such as electric and gas generation, transmission, distribution, and other related facilities.

The House bill includes two exceptions. First, bonds to acquire such output property for the furnishing of electric energy and gas may be issued as tax-exempt private activity bonds, subject to the applicable State private activity bond volume limitation and generally to all other provisions of the Internal Revenue Code governing tax-exempt exempt-facility bonds. Second, bonds to acquire such output property for the furnishing of water are no subject to the new restrictions imposed by the House bill.[3]

The provision applies to bonds (including refunding bonds) issued after October 13, 1987. A transitional exception is provided for acquisitions pursuant to contracts that were binding on October 13, 1987, and at all times thereafter, and for a project-specific acquisition.

Senate amendment

No provision.

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[3] Facilities for the furnishing of water are not defined as output facilities under sec. 141(b)(4).

Conference agreement

The conference agreement follows the House bill in treating as taxable private activity bonds all bonds issued to acquire nongovernmental output property unless the bonds are issued to acquire such property for the furnishing of electric energy and gas (and are issued as tax-exempt exempt-facility bonds) or are issued in connection with the furnishing of water, with several modifications.

Exceptions to general restrictions

Two exceptions are included pursuant to which bonds to acquire nongovernmental output property will not be subject to the new restrictions contained in the conference agreement.

Existing service areas.—Under the first exception, the acquisition of nongovernmental output property by a State or a local governmental unit to meet existing or increased capacity demands within a service area throughout which the acquiring entity has provided the same type of service for at least 10 years immediately preceding the date of the acquisition is not subject to the new restrictions. For example, a governmental authority that provides electricity to a city may use tax-exempt bonds subject only to present-law rules to acquire existing investor- or Federally owned generation and transmission facilities when those facilities will be used to provide output service within the service area throughout which the authority actually has provided electric service during a 10-year minimum service period, described below.[4]

This exception does not apply to those cases where the increase in demand arises from sales outside the existing service area through direct arrangements or through wheeling arrangements with another provider. For example, if a manufacturer built a manufacturing plant outside a governmental output authority's existing service area, but contracted with the authority for electricity, the plant's demand for electricity could not be counted as in demand within the existing service area.

Annexations.—A second exception permits the acquisition of existing nongovernmental output property without regard to the new restrictions in the conference agreement where a governmental unit served by an existing governmental output authority annexes certain contiguous territory in a general governmental purpose annexation, and seeks to expand its electric, gas, or other output service to that annexed territory as part of the annexation. An annexation is treated as being for general governmental purposes if it involves the transfer of voter registration and property tax rolls as well as responsibility for extension of general governmental services (e.g., police and fire protection and sewer and water services) on the same basis as those services are provided to other residents of the governmental unit.

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[4] For example, bonds issued by a governmental output authority to finance construction of a nuclear generation plant to meet capacity requirements for an existing service area (or expansions thereof qualifying for the exception for certain annexations, described below) may be treated as satisfying the exception even if the bonds are issued after it is reasonably anticipated that the interest in the new plant will be traded for an interest in another previously privately owned, coal-fired generation plant.

This exception applies only if (1) the annexed area is no greater than 10 percent of the geographic area of the governmental unit or (2) the output capacity of the governmental authority increases by no more than 10 percent as a result of the acquisition of output property to service the annexed area. Both determinations are made as of the last day of the calendar year immediately before the year in which the annexation occurs. Thus, in the case of a city comprised of 90 square miles, up to 9 square miles of additional territory may be annexed and the extension of output services to that 9 square miles (e.g., through acquisition of an existing privately owned distribution system) could qualify under this exception. An area larger than 9 square miles could be annexed and increased capacity acquired, provided that the increase in capacity did not exceed 10 percent of the output capacity of the governmental authority allocable to the area already served by the annexing governmental entity.

The conferees are aware that cities and other governmental units may annex additional territory on a recurring basis and intend that the 10-percent restrictions be applied separately with regard to each such annexation, provided that such recurring annexations are general purpose annexations.

Further, this exception is available only where service in the annexed area is made available directly to all members of the general public by the acquiring governmental output authority. Thus, for example, the acquisition of output capacity to serve a single, or limited group of, industrial users either directly or through wheeling arrangements with another provider currently serving those users, is subject to the restrictions of the conference agreement.

Rules for applying exceptions

10-year minimum service requirement.—The two exceptions described above generally are available only to governmental authorities that satisfy a 10-year minimum service requirement on actually providing service to their service areas. In applying this rule, a service area to which such an authority actually was providing service (as opposed to being authorized to provide service) on October 13, 1987, is treated as having been served for 10 years. Further, an existing service area does not include any area, which although identified as such in State or local law, has not been actively served during at least a substantial part of the last year.

The conferees recognize that many cities with existing governmental output systems may expand over a 10-year period and as part of that growth may annex neighboring territory in general purpose governmental annexations. Subject to the restrictions in the preceding paragraph on actually serving an area, if such a governmental authority extends its services into such annexed areas in an annexation qualified under the exception described above, the governmental authority is deemed to have satisfied the ten-year minimum service requirement for purposes of future acquisitions if it has served a core area within its total area of actual service with the same type of service for the 10 years immediately preceding the year in which the existing nongovernmental output property is acquired.

Governmental authorities without generation facilities.—The conferees recognize that some existing governmental output systems only provide distribution services, or that they may produce output sufficient to meet only a part of the demand of their service area. The conference agreement does not preclude such a governmental authority from continuing to serve its function by purchasing capacity necessary to meet the existing demand (and reasonable projected future demand, subject to the restrictions described below) of its service area through acquisitions of nongovernmental output property without regard to the new restrictions contained in the agreement.

Excess capacity and the sale of such capacity outside the service area.—The conference agreement does not preclude a governmental authority from acquiring reasonable amounts of capacity beyond the authority's current demand needs while qualifying under either of the two exceptions provided in the agreement. However, no capacity beyond that necessary to meet current output demands may be acquired if that capacity will be used in a manner that gives rise to an amount of private use of bond proceeds sufficient to characterize the bonds issued as part of the issue used to acquire the facilities as private activity bonds.

Under present law, sales of output capacity to nongovernmental entities pursuant to certain output or requirements contracts are not treated as a private business use if the sales occur pursuant to certain power pooling and exchange arrangements or certain spot sales of output capacity, in which case such sales are treated as sales to the general public. Under these rules, exchange agreements that provide for "swapping" of power between governmentally owned and operated utilities and investor-owned utilities do not give rise to a private business use where (1) the swapped power is in approximately equivalent amounts determined over periods of one year or less, (2) the power is swapped pursuant to an arrangement that does not involve output-type contracts, and (3) the purpose of the arrangements is to enable the respective utilities to satisfy differing peak load demands or to accommodate temporary outages. Additionally, spot sales of excess power capacity for temporary periods, other than by virtue of output contracts with specific purchasers, are not treated as private business use of bond proceeds. For purposes of this rule, a spot sale is a sale pursuant to a single agreement that is limited to no more than 30 days' duration (including renewal periods).

Treatment of joint action power agencies.—The conferees are aware that governmental entities may join together to form a governmental joint action agency to supply output services to their citizens. The conference agreement provides that, in applying the exceptions to the new restrictions contained therein, such agencies are to be pierced and the participating governmental units treated as directly providing power within their respective jurisdictions. For example, in applying the 10-year minimum service restriction, the provision of service within each participant's retail service area is determinative. In this case, the joint action agency need not have provided service for the last 10 years as long as the participating governmental entities satisfy the 10-year minimum service requirement. Similarly, if towns A, B, and C who own a joint action

agency seek to avail themselves of the exception for annexations, the exception applies only if the area to be annexed is contiguous to the town annexing it and satisfies the size or capacity limits with respect to that town. On the other hand, an extension of service to town D, as a new member of the agency, would not qualify under the exception.

Definition of nongovernmental output property

The conference agreement clarifies that property is treated as nongovernmental output property only if the property is used or held for use as such by a person other than a State or local government after October 13, 1987. Thus, the fact that property that was previously used by a person other than a State or a local governmental unit will not result in its acquisition being subject to the restrictions in the conference agreement if, before October 13, 1987, another governmental unit, from which the property currently is purchased, acquired the property. As under the House bill, however, if property is constructed for an investor-owned utility, that property is treated as nongovernmental output property. This determination is made without regard to whether the investor-owned utility actually placed the property in service.

The conference agreement further clarifies that nongovernmental output property may be either tangible property or intangible property. Thus, bonds issued to finance acquisition of stock or debt of an existing output company are subject to the restrictions of the agreement, in the same manner as bonds issued to finance an asset buy-out (including intangible assets such as rate deferrals).

Property that, prior to the bond-financed acquisition, has been used as nongovernmental output property, is not subject to the new restrictions in the agreement if the acquiring governmental unit uses the property in another type of use. Thus, for example, acquisition of a garage previously used by an investor-owned utility may be financed with tax-exempt bonds without regard to the new restrictions if the building is acquired to be used as a bus garage by the acquiring governmental unit's public transit system. On the other hand, property that was constructed for use as a nuclear generating plant may not be acquired with the intent to mothball the plant (nothwithstanding that the plant is not used as output property subsequent to the bond-financed acquisition).

Finally, the conference agreement clarifies that street lighting installed in a municipal area that may because of historical practice be owned by an investor-owned utility is not output property. Thus, the municipality could acquire such lighting without regard to the new restrictions included in the agreement.

Effective date.—The conference agreement follows the House bill, with a clarification that tax-exempt bonds issued to acquire nongovernmental output property before October 13, 1987, may be refunded (including advance refunded) subject to the same restrictions as apply to the refunding of such bonds under present law.

The conferees additionally wish to clarify that the term binding contract for purposes of the general transitional exception in the House bill does not include an option to purchase output property. Rather, as provided under the general transitional exceptions in Titles II and XIII of the Tax Reform Act of 1986, a binding contract

exists only if both parties to a transaction are bound to complete the sale/purchase of specifically identified property.

2. Tax-exempt bonds issued by Indian tribal governments

Present law

Indian tribal governments generally are treated like States under the Internal Revenue Code. However, tribal governments may issue tax-exempt bonds only if the proceeds are used in the exercise of an "essential governmental function." Unlike States, tribal governments may not issue tax-exempt private activity bonds.

Treasury Department regulations have defined an "essential governmental function" to include any projects for which Federal assistance to Indian tribes may be provided, thereby including some commercial and industrial activities not generally conducted by States and local governments with general taxing powers.

House bill

The House bill clarifies that for Indian tribal governments an "essential governmental function" does not include any function which is not customarily performed by States and local governments with general taxing powers.

The provision applies to bonds (including refunding bonds) issued after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification permitting Indian tribal governments to issue as tax-exempt private activity bonds certain bonds for tribal manufacturing facilities[5] as an exception to the general rule that tribal governments may issue tax-exempt bonds only for essential governmental functions which States and local governments customarily perform. The conferees adopted this limited exception in recognition of the unique responsibilities of Indian tribal governments in managing historical tribal resources and land held in trust by the Federal Government, and limited its scope to bonds designed to foster employment opportunities on these tribal lands as part of the performance of this unique responsibility.

For a bond to qualify under this exception, no person other than the issuing Indian tribal government may use the bond proceeds (or be responsible for debt service on the bonds) in a manner resulting in violation of the private business use and private payment

[5] A facility which does not qualify as a manufacturing facility for purposes of this provision may nonetheless be financed with tax-exempt bonds issued by a tribal government provided that the facility satisfies the "essential governmental function" standard (i.e., the facility is comparable to facilities that are customarily acquired or constructed and operated by States and local governments. For example, a building used for offices for a tribal government itself would be comparable to State or local government office buildings, and therefore, could be financed with tax-exempt bonds. As another example, a lodge owned and operated by a tribal government may be eligible for tax-exempt financing if it is comparable to lodges customarily owned and operated by State park or recreation agencies.

tests that determine generally whether a bond is a private activity bond (sec. 141(a)). Additionally, no person other than the issuing Indian tribal government may be a principal user of the bond proceeds or bond-financed property in a manner violative of the restrictions on participation in qualified small-issue bonds by franchisors, etc. (sec. 144(a)(6)(B)). Bonds issued by Indian tribal governments under this exception are not subject to State volume caps, but are subject to all other Internal Revenue Code provisions that apply to private activity bonds (and the interest thereon). The conference agreement accomplishes this by treating bonds issued under this exception as qualified small-issue bonds.[6]

The following requirements apply specifically to these bonds:

(1) 95 percent or more of the proceeds of the bonds must be used to finance property that is acquired, constructed, or improved by and operated by the Indian tribal government issuing the bonds; [7]

(2) the bond-financed property must be of a character subject to allowance for depreciation and must be part of a manufacturing facility; [8]

(3) the bond-financed property must be located on Indian tribal which has been held in trust by the United States for the issuing tribe for at least five years immediately preceding issuance of the bonds and at all times when the bonds are outstanding); [9] and

(4) an employment test must be satisfied.

The employment test requires that for every $20 of bonds outstanding, at least $1 in FICA wages must have been paid during the preceding year to a member [10] of the issuing tribe employed at the manufacturing facility financed by the bonds.[11] It must be reasonably expected that the employment test will be satisfied when the bonds are issued. Further, the employment test is applied at the end of each calendar year that all or part of the bond issue is outstanding, beginning two years after the date of original issuance of the bonds. If the test is not satisfied as of any of these annual determination dates, the issuing tribal government must redeem bonds in an amount sufficient to meet the test within 90 days. Otherwise, interest on the bonds is taxable as of January 1 of the year following the December 31 when that determination of noncompliance is made.

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[6] Despite their treatment as qualified small-issue bonds, many of the restrictions generally applicable to such bonds under sec. 144(a) do not apply to these bonds. For example, bonds qualifying for tax-exemption under this exception are not subject to the termination date or the special size limits generally applicable to qualified small-issue bonds.

[7] The conferees intend that this requirement be treated as satisfied if the property is owned by a wholly-owned Indian corporation or other entity, which owns the property on behalf of the issuing tribal government. In addition, property financed with the bonds may be owned by a joint venture entered into between two or more Indian tribal governments.

[8] The term manufacturing facility is defined in the same manner under this exception as that term is defined for purposes of the exception permitting issuance of qualified small-issue bonds. (*See* sec. 144(a)(12)(C).)

[9] Qualifying land held in trust by the United States for a tribe includes, e.g., trust land located on a reservation or elsewhere in Indian country (e.g., Oklahoma).

[10] Members of the issuing tribe include a tribal member's spouse, even if such spouse is not a member of the issuing tribe.

[11] If two or more Indian tribes jointly financed a manufacturing facility under this provision, the employment test is met by a pro rata apportionment of FICA wages by tribe according to the relative participation of each tribe.

The employment test is to be applied with respect to the establishment (as that term is used in the *Standard Industrial Classification Manual*) of which the bond financed property is a part, not with respect to the specific bond financed property itself. For example, if bonds were issued to finance additional equipment at an existing saw mill, all wages paid to Indian employees working at the saw mill would count for purposes of the employment test. Wages paid to lumberjacks working at locations different from the saw mill would not count even if they were paid by the same tribal enterprise.

These provisions apply to bonds (including refunding bonds) issued after October 13, 1987.

PART 2. TECHNICAL CORRECTIONS

House bill

The House bill contains technical, clerical, and conforming amendments to the Tax Reform Act of 1986 and other recently enacted tax legislation (subtitle B of Title X of the House bill).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

PART 3. MISCELLANEOUS TAX PROVISIONS

House bill

The House bill contains miscellaneous tax provisions (subtitle C of Title X of the House bill).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

PART 4. TAX-EXEMPT ORGANIZATIONS' LOBBYING AND POLITICAL ACTIVITIES

A. DISCLOSURE REQUIREMENTS

1. Disclosure by certain tax-exempt organizations of nondeductibility of contributions

Present law

Only certain categories of tax-exempt organizations are eligible to receive tax-deductible charitable contributions for Federal income tax purposes (sec. 170(c)). Present law does not require other types of tax-exempt organizations, such as certain lobbying groups or political action committees, to state in solicitations for "contributions" or "donations" that such amounts are not deductible as charitable contributions.

House bill

The House bill requires that certain fundraising solicitations by a tax-exempt organization, other than by an organization eligible to receive tax-deductible charitable contributions, must contain a conspicuous and easily recognizable statement that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes. The disclosure requirement applies to a solicitation if: (1) the soliciting organization normally has gross receipts in excess of $100,000 per year, (2) the solicitation is part of a coordinated fundraising campaign soliciting more than 10 persons during the year, and (3) the solicitation is made in written form, by television or radio, or by telephone.

A penalty of $1,000 is imposed on the organization for each day there was a failure to comply, unless the failure was due to reasonable cause; the maximum penalty for any one year is $10,000. A higher penalty, not subject to this maximum, applies if the failure to comply was due to intentional disregard.

The provision is effective for solicitations made after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification that the provision is effective for solicitations made after January 31, 1988.

2. Public inspection of exemption application and annual information returns of tax-exempt organizations

Present law

The annual information return of a tax-exempt organization is disclosable to the public through requests to the IRS. (Names of contributors to public charities, however, are not disclosable.) In addition, private foundations must make current annual returns available for public inspection at their principal office.

An exemption application filed by a tax-exempt organization, and the IRS determination of its exempt status, are disclosable to the public through requests to the IRS.

House bill

Information returns.—The House bill provides that a tax-exempt organization (other than a private foundation) must make available for public inspection, generally at the organization's principal office, a copy of its three most recent annual information returns. (Names of contributors to the organization need not be disclosed.) The returns also must be available for inspection at certain regional or district offices of the organization. Private foundations remain subject to the present-law disclosure requirements.

Annual information returns of tax-exempt organizations continue to be disclosable to the public through requests to the IRS. The bill does not modify the requirements for filing returns.

The provision is effective for annual returns for years beginning after December 31, 1986.

Exemption application.—The House bill provides that a tax-exempt organization must make a copy of its exemption application, and the determination of exempt status, available for public inspection at the organization's principal office (and at certain regional or district offices).

Penalty.—Any person under a duty to comply with the inspection provisions who, without reasonable cause, fails to make annual information returns or exemption applications available for public inspection is subject to a penalty of $10 for each day the disclosure requirement was not satisfied. A maximum penalty of $5,000 applies for all failures to disclose any one annual information return. (There is no maximum penalty for failures to disclose any one exemption application.) Additional penalties apply if the failure to permit public inspection was willful.

The provisions are effective on or after the date of enactment, unless the exemption application was submitted to the IRS on or before July 15, 1987, and the organization does not possess a copy of such application.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with a modification that the provision with respect to inspection of exemption applications applies 30 days after the date of enactment.

3. Additional information on annual information returns of section 501(c)(3) organizations

Present law

Except for churches and certain other organizations, any tax-exempt organization must file an annual information return with the IRS, setting forth the organization's items of gross income, receipts, and disbursements, plus certain other information related to the administration of the tax law.

A tax-exempt charitable organization described in section 501(c)(3) must also provide certain additional information relating to contributions received by the organization and compensation paid to its employees.

A tax-exempt organization which, without reasonable cause, fails to file a required annual information return is subject to a penalty of $10 a day for each day the failure continues, with a maximum penalty of $5,000 with regard to any one return. In addition, the organization's managers are subject to a similar penalty if, without reasonable cause, they refuse to file the return after demand from the IRS.

House bill

The House bill requires tax-exempt charitable organizations described in section 501(c)(3) to include in their annual returns information about direct and indirect transactions or relationships be-

tween such organizations and other tax-exempt organizations not described in section 501(c)(3)—e.g., certain lobbying groups—or political organizations described in section 527.

The IRS may issue regulations or forms requiring the furnishing of any such information for purposes of preventing diversion of funds from a charitable organization's exempt purpose or misallocation of revenues or expenses between organizations.

The House bill expands the scope of the penalty provisions to apply to cases where a tax-exempt organization files an annual information return but, without reasonable cause, fails to furnish on the return any required information, or furnishes incorrect information. The maximum penalty imposed on an organization with respect to one return may not exceed the lesser of $5,000 or five percent of the organization's gross receipts for the year.

The additional information must be furnished on annual returns for years beginning after December 31, 1987. The penalty for failing to provide required or correct information applies to returns for years beginning after December 31, 1986.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. Required disclosure that certain information or services sold by tax-exempt organizations are available free from the Federal Government

Present law

There is no tax penalty under present law if a tax-exempt organization selling certain information or services to the public fails to disclose that such information or services could be obtained free (or for nominal charge) directly from the Federal Government.

House bill

The House bill imposes a penalty on a tax-exempt organization (including a sec. 527(e) political organization) that sells to individuals certain information or routine services that could be readily obtained free of charge (or for a nominal charge) from the Federal Government and fails to make an express statement (in a conspicuous and easily recognizable format) that the information or services can be so obtained if such failure is due to intentional disregard of the disclosure requirement. Such an intentional failure subjects the organization to a penalty equal to the greater of (1) $1,000 for each day the failure occurred or (2) 50 percent of the aggregate cost of solicitations made by the organization that failed to include the required disclosure.

The provision is effective for solicitations made after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification that the provision is effective for solicitations made after January 31, 1988.

B. POLITICAL CAMPAIGN ACTIVITIES AND LOBBYING ACTIVITIES OF SECTION 501(C)(3) ORGANIZATIONS

Clarification of prohibited political campaign activities

Present law

An organization does not qualify for tax-exempt status as a charitable organization under section 501(c)(3), and is not eligible to receive tax-deductible charitable contributions, unless no substantial part of its activities is carrying on propaganda or otherwise attempting to influence legislation, and unless the organization does not participate in, or intervene in, any political campaign on behalf of a candidate for public office. Treasury regulations interpret the prohibition on political campaign activities to prohibit any such activities either on behalf of or in opposition to any candidate for public office.

House bill

The House bill clarifies that the statutory provision disqualifying organizations that engage in political campaign activities from tax-exempt status under section 501(c)(3), and from eligibility to receive tax-deductible charitable contributions, applies with respect to campaign activities in opposition to, as well as on behalf of, a candidate for public office.

The statutory clarification applies with respect to activities occurring after the date of enactment. (Treasury regulations also apply the same rule with respect to prior activities.)

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Status of organization after loss of exemption under section 501(c)(3) because of political campaign activities

Present law

Present law provides that a charitable organization that loses its tax-exempt status under section 501(c)(3) because of its lobbying activities may not be treated thereafter as a tax-exempt social welfare organization under section 501(c)(4). If a charitable organization loses its tax-exempt status under section 501(c)(3) on account of prohibited political campaign activities, the organization may be eligible to be automatically reclassified as tax-exempt under section 501(c)(4).

House bill

The House bill provides that an organization that ceases to qualify for tax-exempt status under section 501(c)(3) by reason of participating or intervening in a political campaign on behalf of, or in opposition to, a candidate for public office cannot thereafter qualify as a tax-exempt organization described in section 501(c)(4). The provision applies with respect to activities occurring after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. Excise taxes on political expenditures of charitable organizations

Present law

A private foundation described in section 501(c)(3) (but not a public charity described in that section) is subject to an excise tax equal to ten percent of any expenditure to influence the outcome of any specific public election cr for any other noncharitable purpose (sec. 4945). An additional excise tax equal to 100 percent of the political expenditure is imposed on the foundation if the expenditure is not "corrected" (meaning that the foundation must recover the expenditure to the extent possible and establish safeguards to prevent such expenditures in the future).

If a private foundation is liable for the excise tax, an excise tax equal to 2½ percent of the expenditure (not to exceed $5,000 per expenditure) is imposed on any manager who, without reasonable cause, agreed to the expenditure knowing that it was a political expenditure. An additional excise tax equal to 50 percent of the expenditure (not exceeding $10,000 per expenditure) is imposed on a foundation manager who refuses to agree to correction of the expenditure.

Any charitable organization (including a private foundation) ceases to qualify for tax-exempt status under section 501(c)(3), or for eligibility to receive tax-deductible charitable contributions, if it participates or intervenes in any political campaign for or against a candidate for public office.

House bill

The House bill extends the penalty tax structure applicable under present law to private foundations so that if any charitable organization described in section 501(c)(3) makes a political expenditure (as defined below), the organization is subject to an excise tax equal to ten percent of the amount of the expenditure. An additional excise tax equal to 100 percent of the political expenditure is imposed on the organization if the expenditure is not "corrected" (meaning that the organization must recover the expenditure to the extent possible and establish safeguards to prevent future political expenditures).

Under the bill, an excise tax equal to 2½ percent of the expenditure (not to exceed $5,000 per expenditure) is imposed on any manager of the organization who, without reasonable cause, agreed to the expenditure knowing that it was a political expenditure. (As under the present-law excise taxes, the IRS has the burden of proof as to whether the manager knowingly participated in the political expenditures.) An additional excise tax equal to 50 percent of the political expenditure (not exceeding $10,000 per expenditure) is imposed on any manager who refuses to agree to correction of the expenditure.

In general, "political expenditure" is defined as any expense of participating or intervening in a political campaign for or against a candidate for public office. The House bill also provides that solely in the case of an organization formed or availed of substantially for purposes of promoting the candidacy or potential candidacy of an individual for public office, the term "political expenditure" includes, for purpcses of the excise tax, certain types of expenditures (such as travel expenses of such individual) specified in the bill.

The adoption of the excise tax sanction does not modify the present-law rule that an organization is not tax-exempt under section 501(c)(3), or eligible to receive tax-deductible charitable contributions, if the organization engages in any political campaign activities.

The provisions apply for taxable years beginning after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the modifications described below.

The conference agreement provides that the Internal Revenue Service is not to assess, or is to abate or refund, any initial (first-tier) excise tax on political expenditures if the organization or manager establishes to the satisfaction of the IRS that (1) the political expenditure was not willful and flagrant and (2) that the political expenditure was corrected (meaning that the expenditure is recovered to the extent possible and safeguards are established to prevent future political expenditures).

The conference agreement includes modifications to the House bill provision that enumerates certain expenditures as political expenditures for purposes of the excise tax in the case of an organization that is formed, or effectively controlled by a candidate or prospective candidate which organization is availed of, primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office. The enumerated expenditures specified in the modified provision are (1) amounts paid or incurred to such individual for speeches or other services; (2) travel expenses of such individual; (3) expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual; (4) expenses of advertising, publicity, and fundraising for such individual; and (5) any other expense which has the primary

effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

The fifth category includes, for example, expenditures for voter registration, voter turnout, or voter education activities that under present law constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office—i.e., that under present law constitute political campaign activities that are inconsistent with tax-exempt status under section 501(c)(3) and with eligibility to receive tax-deductible charitable contributions under section 170(c)(2). Conversely, the fifth category does not include (and the excise tax does not apply to) expenditures for voter registration, voter turnout, or voter education that under present law do not constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office—i.e., that under present law constitute activities that are consistent with tax-exempt status under section 501(c)(3) and with eligibility to receive tax-deductible charitable contributions under section 170(c)(2). Thus, the conference agreement does not in any way change the present-law rules as to the types of voter registration, voter turnout, and voter education activities in which a charitable organization may engage consistent with tax-exempt status under section 501(c)(3) and eligibility to receive tax-deductible charitable contributions under section 170(c). (The special rules in section 4945(f) applicable to voter registration activities of private foundations continue to apply only to private foundations.) For example, neutral voter education activities as described in Rev. Rul. 78–248, 1978–1 C.B. 154, continue to constitute activities that are consistent with status as a tax-exempt charitable organization, and do not result in imposition of the excise tax.

As noted above, the conference agreement modifies the House bill provision enumerating certain expenditures as political expenditures for purposes of the excise tax, so that the provision applies only in the case of an organization formed, or effectively controlled by a candidate or prospective candidate which organization is availed of, primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office. The conferees intend that, for purposes of this provision, an organization is to be considered as effectively controlled by a candidate or prospective candidate only if the individual has a continuing, substantial involvement in the day-to-day operations or management of the organization. An organization is not to be considered as effectively controlled by a candidate or a prospective candidate merely because it is affiliated with such candidate, or merely because the candidate knows the directors, officers, or employees of the organization. Likewise, the effectively controlled test is not met merely because the organization carries on its research, study, or other educational activities with respect to subject matter or issues in which the individual is interested or with which the individual is associated.

The conferees intend that the determination of whether the primary purposes of an organization described in the provision are promoting the candidacy or prospective candidacy of an individual for public office is to be made on the basis of all relevant facts and circumstances. The factors to be considered include whether the surveys, studies, materials, etc. prepared by the organization are

made available only to one individual (the candidate) or are made available to the general public; and whether the organization pays for speeches and travel expenses for only one individual, or for speeches or travel expenses of several persons. The fact that a candidate or prospective candidate utilizes studies, papers, materials, etc. prepared by the organization (for example, in speeches by the individual) is not to be considered as a factor indicating that the organization has a purpose of promoting the candidacy or prospective candidacy of such individual where such studies, papers, materials, etc. are not made available only to that individual.

4. Additional enforcement authority in the case of flagrant political expenditures by charitable organizations

Present law

Under present law, the IRS does not have authority to make immediate tax assessments or to seek a court injunction against continuing political expenditures of a charitable organization even if the organization is flagrantly violating the prohibition on any political campaign activities. The IRS has such enforcement authority to remedy other violations of the tax law.

House bill

The House bill authorizes the IRS to make an immediate determination and assessment of income tax, or of the excise tax on political expenditures, for the current or preceding taxable year of a charitable organization described in section 501(c)(3) if the IRS finds that (1) the organization has made political expenditures, and (2) such expenditures constitute a flagrant violation of the prohibition against making political expenditures.

The IRS also is given authority to seek an injunction from a Federal district court prohibiting a charitable organization from further making political expenditures. The injunction action may be instituted only if the IRS has notified the organization of its intention to seek an injunction if the making of political expenditures does not immediately cease, and only if the Commissioner personally determines that (1) the organization has flagrantly participated or intervened in a political campaign, and (2) injunctive relief is appropriate to prevent future political expenditures.

The provisions are effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. Excise tax on disqualifying lobbying expenditures of certain charitable organizations

Present law

A tax-exempt private foundation described in section 501(c)(3) is subject to an excise tax equal to ten percent of any expenditure to carry on propaganda or otherwise to attempt to influence legisla-

tion, or for any other noncharitable purposes (sec. 4945). If the foundation is liable for the excise tax, any manager of the foundation who, without reasonable cause, agreed to making the expenditure knowing it was a taxable expenditure is subject to an excise tax equal to 2½ percent of the expenditure (not exceeding $5,000 per expenditure).

Certain public charities described in section 501(c)(3) may elect to have the amount of permitted lobbying expenditures they may make measured under the arithmetical tests set forth in section 501(h). If lobbying expenditures exceed the allowable amounts under that section, an excise tax is imposed on the organization equal to 25 percent of the excess lobbying expenditures. If the electing organization's lobbying expenditures normally are more than 150 percent of the allowable amounts, the organization is disqualified from tax-exempt status.

Except where section 501(h) applies, any charitable organization (including a private foundation) ceases to qualify for tax-exempt status, or eligibility to receive tax-deductible charitable contributions, if more than an insubstantial part of its activities consists of lobbying.

House bill

The House bill imposes an excise tax equal to five percent of the lobbying expenditures of certain charitable organizations if (and only if) the organization ceases to qualify for tax-exempt status under section 501(c)(3) by engaging in more than an insubstantial amount of lobbying activities. The tax does not apply to (1) charitable organizations that have elected to be subject to the lobbying limitations of section 501(h), (2) churches or certain church-related organizations that are not eligible to elect the section 501(h) rules, or (3) private foundations (which are subject to the section 4945 excise tax on lobbying activities).

If an organization whose exempt status has ceased is liable for the excise tax, any manager of the organization who, without reasonable cause, agreed to making the lobbying expenditures knowing that the expenditures could result in revocation of the organization's tax-exempt status is subject to a tax equal to five percent of such lobbying expenditures. As under the present-law excise taxes, the IRS has the burden of proof as to whether the manager knowingly participated in the lobbying expenditures.

The provisions are effective for taxable years beginning after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modification relating to a manager's liability for the tax. Under the conference agreement, if an organization whose exempt status has been revoked is liable for the new excise tax on lobbying expenditures, a tax equal to five percent of such lobbying expenditures is imposed on any manager of the organization who agreed to the making of the expenditures, knowing that such lobbying ex-

penditures were likely to result in revocation of the organization's tax-exempt status, unless the manager's agreement was not willful and was due to reasonable cause. The burden of proof as to whether the manager knowingly participated in the lobbying expenditures is on the Internal Revenue Service. The fact that the excise tax is imposed on an organization does not itself establish that any manager of the organization is subject to the excise tax.

The reasonable cause exception to the tax applicable to managers is to be applied in the same manner as the present-law reasonable cause exception to the excise tax liability of managers of a private foundation under section 4945 (see Treas. Reg. sec. 53.4945-1). Thus, a manager is liable for the excise tax under the conference agreement only if the IRS shows that, in agreeing to the making of the lobbying expenditures, the manager knew that such expenditures constituted lobbying expenditures and knew that as a result of such expenditures the organization was likely to lose its tax-exempt status under section 501(c)(3), and only if the manager failed to obtain an opinion of counsel concerning the expenditures that would protect the manager under the reasonable cause exception.

APPENDIX—ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS OF CONFERENCE AGREEMENT—FISCAL YEARS 1988-90

[Millions of dollars]

Item	1988	1989	1990	1988-90
PART 1.—REVENUE PROVISIONS				
I. Individual Tax Provisions:				
A. Income Tax Provisions:				
1. Child and dependent care credit: Deny credit for overnight camp expenses	11	106	112	229
2 Limit interest deduction: Home equity debt in excess of acquisition debt capped at $100,000; total for qualified residence debt capped at $1 million	8	31	54	93
3. One-year delay in application of 2% floor to indirect deductions through regulated investment companies	−239			−239
B. Employee Benefit Provisions: Modify definition of active participant for IRA rules	(1)	(1)	(1)	(1)
II. Business Tax Provisions:				
A. Accounting Provisions:				
1. Repeal vacation pay reserve	614	885	1,639	3,138
2. Repeal completed contract method	417	773	975	2,165
3. Require capitalization of pension past service liability	91	153	173	417
4, Repeal installment method for dealers	1,593	2,750	1,942	6,285
5 Repeal cash method of accounting for farms with receipts over $25 million	27	42	45	114
6. Changes in required taxable years for partnerships, S corporations, and personal service corporations	31	(1)	3	34
B. Partnership Provisions:				
1. Portfolio income	77	127	170	374
2. Other publicly-traded partnership provisions	22	42	60	124
3. Treatment of tax-exempt partners	28	97	111	236
4. Study of publicly-traded partnerships				
C. Corporate Provisions:				
1. Modify computation of earnings and profits for intercorporate dividends and basis adjustments (overrule Woods Investment Company case)	34	208	450	692
2. Denial of graduated rates for personal service corporations	75	125	140	340
3. Dividend received deduction to 70%	219	381	426	1,026

APPENDIX—ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS OF CONFERENCE AGREEMENT—FISCAL YEARS 1988–90—Continued

[Millions of dollars]

Item	1988	1989	1990	1988–90
4. Reduction of tax avoidance in certain corporate dispositions	37	94	273	404
5. Greenmail and hostile corporate takeovers	(1)	(1)	(1)	(1)
6 Limitations on net operating loss carryforwards of corporations following worthless securities deduction by shareholders	5	8	9	22
7. Tax loss mergers and benefit acquisitions	26	44	48	118
8. LIFO recapture on conversion from C corporation to S corporation	58	129	185	372
9. Regulated Investment Companies capital gains distribution	240	12	15	267
D. Pensions: Modify funding rules [2]	679	1,502	992	3,173
E. Foreign Tax Provisions: Treatment of South African income	20	23	14	57
F Insurance Provisions:				
1. Interest rate used in computing reserves for life insurance and annuity contracts	43	154	208	405
2. Treatment of investment income of foreign insurance companies	11	27	39	77
3. Minimum tax treatment of mutual life insurance companies	25	57	61	143
III. Estimated Tax Provisions	806	117	79	1,002
IV. Estate and Gift Taxes:				
1. Freeze estate and gift rates at 55%	21	176	232	429
2. Modify rates and unified credit	2	23	31	56
3. Valuation of property (estate tax freezes & minority discount)	6	46	57	109
4. ESOP estate tax deduction	1,226	1,553	1,862	4,641
V. Excise Taxes.				
1. Telephone tax: 3-year extension	1,324	2,266	2,472	6,062
2. Collect diesel fuel and special motor fuels taxes on sales to retailer	215	230	200	645
3. Extension of termination date for coal excise tax rate				
VI Other Revenue—Increase Provisions				
A. Targeted Jobs Tax Credit	4	2	2	7
B. Illegal Federal Irrigation Subsidies as Gross Income	(1)	(1)	(1)	1
C. Compliance Provisions:				
1. Escheat of refunds	10	10	10	30
2. IRS funding				
D Tax-Exempt Bond Provisions:				
1 Limitation on issuance of tax-exempt bonds to acquire existing output facilities	9	70	162	241
2. Limitation on issuance of tax-exempt bonds by Indian tribes	6	18	29	53
VII. Employment Taxes (Title IX):				
1 Railroad retirement taxes	144	182	183	509
2 FUTA tax. 3-year extension	715	1,009	1,033	2,757
3. FICA taxes.				
a. Expand employer share of FICA tax to include all cash tips	184	281	302	767
b. Expand FICA tax to inactive duty reservists, certain agricultural employees, family members, and group-term life insurance includible in wages	187	255	275	717
VIII. Vaccine Compensation Tax and Trust Fund (Title IX) [3]	67	89	−5	151
Subtotal: Part 1.—Revenue Provisions	9,078	14,097	15,068	38,243
PART 2.—USER FEES (Title IX)				
I. Internal Revenue Service	46	60	60	166
II. Extensions and increases in certain Alcohol, Tobacco, and Firearms occupational taxes	167	106	106	379
III Customs Service	122	152	591	865
Subtotal: Part 2 —User Fees	335	318	757	1,410
Grand Total	9,413	14,415	15,825	39,653

[1] Gain of less than $500,000
[2] Estimates represent the net effects of full-funding rules and underfunding rules
[3] Estimate net of outlay amounts

From the Committee on the Budget, for consideration of the House bill (except Title X), and the Senate amendment (except subtitle B of Title IV), and modifications committed to conference:

WILLIAM H. GRAY III,
BUTLER DERRICK,
MARTIN FROST,
ED JENKINS,
PAT WILLIAMS,
JAMES L. OBERSTAR,
WILLIAM F. GOODLING,

From the Committee on the Budget, for consideration of Title X of the House bill, and subtitle B of Title IV of the Senate amendment, and modifications committed to conference:

ED JENKINS,

From the Committee on Agriculture, for consideration of Title I and section 5003 of the House bill, and Title VIII and sections 2101 through 2113, 2301, 3001, and 9005 of the Senate amendment, and modifications committed to conference:

DE LA GARZA,
ED JONES,
CHARLIE ROSE,
JERRY HUCKABY,
DAN GLICKMAN,
CHARLIE STENHOLM,
LEON E. PANETTA,
ED MADIGAN,
ARLAN STANGELAND,
ROBERT F. SMITH,
TOM LEWIS,
WALLY HERGER,

From the Committee on Armed Services, for consideration of section 5001 of the Senate amendment, and modifications committed to conference:

LES ASPIN,
BEVERLY BYRON,
WILLIAM L. DICKINSON,

From the Committee on Banking, Finance and Urban Affairs, for consideration of Title II of the House bill, and sections 9006, 9007, 9010, and 9012 of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
FRANK ANNUNZIO,
MARY ROSE OAKAR,
ROBERT GARCIA,

From the Committee on Banking, Finance, and Urban Affairs, for consideration of Title X of the Senate amendment, and modifications committed to conference:

FERNAND ST GERMAIN,
MARY ROSE OAKAR,

From the Committee on Education and Labor, for consideration of Title III and subtitle E and section 9602 of Title IX of the House bill, and Part VI of Title IV, Title VI, and sections 4111, 4112, and 9008 of the Senate amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
(except for the pension provisions)
WILLIAM D. FORD,
(except for the pension provisions)
JOSEPH M. GAYDOS,
(except for the pension provisions)
WILLIAM L. CLAY,
(except for the pension provisions)
PAT WILLIAMS,
(except for the pension provisions)
DALE E. KILDEE,
(except for the pension provisions)
MAJOR R. OWENS,
(except for the pension provisions)
JAMES M. JEFFORDS,
WILLIAM F. GOODLING,
TOM COLEMAN,
MARGE ROUKEMA,

From the Committee on the Budget, for consideration of Title III and subtitle E of Title IX of the House bill, and part VI of subtitle B of title IV and subtitle A of Title VI of the Senate amendment:

DELBERT LATTA,
CONNIE MACK,
DENNY SMITH,

From the Committee on Energy and Commerce, for consideration of subtitles A, B, and C of Title IV, parts 2 through 4 of subtitle C of Title IX, and sections 1052 and 9602 of the House bill, and subparts II through V of part A, subparts I (except sections 4086 and 4091) and II of part B of subtitle A of Title IV and sections 4001(q), 4002(b), 4002(c), 4051, 4111 through 4113, 9010, and 9011 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,
CARDISS COLLINS,
MIKE SYNAR,
RON WYDLER,
JIM SLATTERY,
BOB WHITTAKER,
(only for the Medicaid provisions)
TOM TAUKE,
(only for the Medicaid provisions)

From the Committee on Energy and Commerce, for consideration of sections 4301, 5001, and 6201 of the House bill, and subtitle A of Title II and Title III (except sections 3001 and 3003) of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHILIP R. SHARP,
AL SWIFT,
MICKEY LELAND,
JIM COOPER,
JIM SLATTERY,
NORMAN F. LENT,
CARLOS MOORHEAD,
BILL DANNEMEYER,
(only for section 6201 of the House bill)
JACK FIELDS,

From the Committee on Energy and Commerce, for consideration of section 9033 of the House bill, and section 4583 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
TOM LUKEN,
JAMES J. FLORIO,
BILLY TAUZIN,
JERRY SIKORSKI,
RICK BOUCHER,
JIM SLATTERY,
NORMAN F. LENT,
BOB WHITTAKER,
TOM TAUKE,
MIKE BILIRAKIS,

From the Committee on Interior and Insular Affairs, for consideration of sections 4301 and 5001 of the House bill, and sections 2001 through 2009 and 3010 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEO MILLER,
AUSTIN J. MURPHY,
BRUCE F. VENTO,
ED MARKEY,
(only for purposes of NRC user fees)
NICK RAHALL,
(only for purposes of NRC user fees)
DON YOUNG,
MANUEL LUJAN, Jr.,
ROBERT J. LAGOMARSINO,
RON MARLENEE,

From the Committee on Interior and Insular Affairs, for consideration of sections 5002 through 5004 of the House bill, and sections 2101 through 2113 and 9009 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEORGE MILLER,
PHILIP R. SHARP,
ED MARKEY,
AUSTIN J. MURPHY,
NICK RAHALL,
DON YOUNG,
MANUEL LUJAN, Jr.,
ROBERT J. LAGOMARSINO,
RON MARLENEE,

From the Committee on Interior and Insular Affairs, for consideration of section 5005 of the House bill, and sections 2201 through 2203 and 2301 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEO MILLER,
PHILIP R. SHARP,
ED MARKEY,
SAM GEJDENSON,
BRUCE F. VENTO,
DON YOUNG,
MANUEL LUJAN, Jr.,
ROBERT J. LAGOMARSINO,
RON MARLENEE,

From the Committee on the Judiciary, for consideration of the bankruptcy provisions contained in sections 9432 and 9433 of the House bill, and sections 4553(e), 4558, and 4559 of the Senate amendment, and modifications committed to conference:

HAMILTON FISH, Jr.,
BILL DANNEMEYER,
CARLOS J. MOORHEAD,
HENRY J. HYDE,

From the Committee on Merchant Marine and Fisheries, for consideration of Title VI of the House bill, and sections

1002, 2002 (insofar as that section would add a new section 409 (c) and (d) to the Nuclear Waste Policy Act of 1982), 2008, and 3001 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
MIKE LOWRY,
EARL HUTTO,
BOB DAVIS,
DON YOUNG,
(except for sections 2002 and 2008 of the Senate amendment)
NORMAN F. LENT,
(except for sections 2002, 2008, and 3001 of the Senate amendment)
NORMAN D. SHUMWAY,
BILL HUGHES,
(solely for section 3001 of the Senate amendment)

From the Committee on Post Office and Civil Service, for consideration of Title VII of the House bill, and Title V (except section 5002) of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
MICKEY LELAND,
GARY L. ACKERMAN,
GENE TAYLOR,
FRANK HORTON,

From the Committee on Public Works and Transportation only for consideration of subtitle A of Title VI of the House bill:

JAMES J. HOWARD,
ROBERT A. ROE,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY NOWAK,
NICK RAHALL,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND,
NEWT GINGRICH,

From the Committee on Government Operations, for consideration of sections 5002 and 9003 of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
JOHN CONYERS,
CARDISS COLLINS,
GLENN ENGLISH,
HENRY A. WAXMAN,
TED WEISS,
FRANK HORTON,
ROBERT A. WALKER,
WILLIAM F. CLINGER,
AL MCCANDLESS,

From the Committee on Science, Space, and Technology, for consideration of sections 2002 (insofar as that section would add new sections 403(i) and 410 to the Nuclear Waste Policy Act of 1982), 2006, and 2008 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
GEORGE E. BROWN, Jr.,
JAMES H. SCHEUER,
TIM VALENTINE,
JIM CHAPMAN,
SID MORRISON,
LAMAR SMITH,
ERNEST KONNYU,

From the Committee on Veterans' Affairs, for consideration of Title VIII of the House bill, and Title VII of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
MARCY KAPTUR,
GERALD B.H. SOLOMON,

From the Committee on Ways and Means, for consideration of Title III, subtitle A of Title IV, and Title IX of the House bill, and subtitle A of Title IV (except subpart V of Part A and Subpart II of Part B) and subtitle A of Title VI and section 8309 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
THOMAS J. DOWNEY,
BILL GRADISON,
BILL FRENZEL,
(only for the pension provisions)
RICHARD T. SCHULZE,
(only for the pension provisions)

From the Committee on Ways and Means, for consideration of Title X of the House bill, and subtitle B of Title IV of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
THOMAS J. DOWNEY,

From the Committee on Ways and Means, for consideration of Title X of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
THOMAS J. DOWNEY,
JOHN J. DUNCAN,

As additional conferees, for consideration of the House bill (except Title X), and the Senate amendment (except subtitle B of Title IV), and modifications committed to conference:

THOMAS S. FOLEY,
DICK CHENEY,
Managers on the Part of the House.

From the Committee on the Budget:

LAWTON CHILES,
ERNEST F. HOLLINGS,
J. BENNETT JOHNSTON,
JIM SASSER,
DON RIEGLE,
J.J. EXON,
FRANK R. LAUTENBERG,
PETE V. DOMENICI,
RUDY BOSCHWITZ,
BOB DOLE,

From the Committee on Agriculture, Nutrition, and Forestry:

PAT LEAHY,
JOHN MELCHER,
DAVID PRYOR,
RICHARD G. LUGAR,
THAD COCHRAN,

From the Committee on Armed Services:

SAM NUNN,
JOHN GLENN,

From the Committee on Banking, Housing, and Urban Affairs:

WILLIAM PROXMIRE,
ALAN CRANSTON,
PAUL SARBANES,

From the Committee on Commerce, Science, and Transportation:

FRITZ HOLLINGS,
DANIEL K. INOUYE,
WENDELL H. FORD,
JACK DANFORTH,

From the Committee on Energy and Natural Resources:

J. BENNETT JOHNSTON,
DALE BUMPERS,
WENDELL FORD,
JOHN MELCHER,
JEFF BINGAMAN,
TIM WIRTH,
DON NICKLES,

From the Committee on Environment and Public Works;
QUENTIN N. BURDICK,
GEORGE MITCHELL,
MAX BAUCUS,
JOHN BREAUX,
ROBERT T. STAFFORD,
JOHN H. CHAFEE,
DAVE DURENBERGER,
From the Committee on Finance:
LLOYD BENTSEN,
SPARK M. MATSUNAGA,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
DAVID L. BOREN,
BILL BRADLEY,
GEORGE MITCHELL,
BOB PACKWOOD,
JOHN C. DANFORTH,
JOHN H. CHAFEE,
JOHN HEINZ,
From the Committee on Governmental Affairs:
JOHN GLENN,
LAWTON CHILES,
JIM SASSER,
DAVID PRYOR,
TED STEVENS,
(except I do not concur with the budget reduction allocations pursuant to the Summit agreement)
WARREN B. RUDMAN,
From the Committee on Labor and Human Resources:
TED KENNEDY,
CLAIBORNE PELL,
PAUL SIMON,
ORRIN HATCH,
ROBERT T. STAFFORD,
DAN QUAYLE,
From the Committee on Veterans' Affairs:
ALAN CRANSTON,
SPARK M. MATSUNAGA,
FRANK H. MURKOWSKI,
Managers on the Part of the Senate.

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